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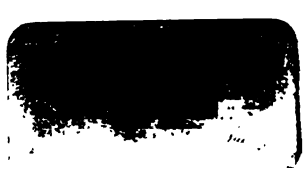

COPYRIGHT LAW REFORM.

BY

J. M. LELY, Esq., Barrister-at-Law.

COPYRIGHT LAW REFORM:

AN EXPOSITION OF

LORD MONKSWELL'S COPYRIGHT BILL

NOW BEFORE PARLIAMENT;

WITH

Extracts from the Report of the Commission of 1878,

AND AN APPENDIX CONTAINING

THE BERNE CONVENTION

AND

THE AMERICAN COPYRIGHT BILL.

BY

J. M. LELY, Esq., *Barrister-at-Law.*

EYRE AND SPOTTISWOODE,

Government and General Publishers,

LONDON—EAST HARDING STREET, E.C.

1891.

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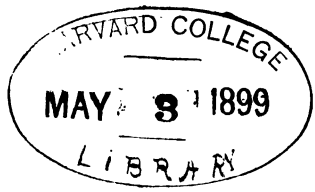

PREFACE.

In the following pages I have endeavoured to describe in popular, but, it is hoped, not inexact language, the scope and object of Lord Monkswell's Bill "to amend and con- "solidate the law relating to copyright," which now awaits a second reading in the House of Lords.

With this view I have briefly stated the leading heads of the existing law, pointed out its more harmful defects, and summarised the remedies proposed by the Bill. I have also printed the material parts of the all-important Report of the Commission of 1878, on which the Bill is mainly founded, not omitting Sir Louis Mallet's dissentient Report; and have briefly touched on the "Manners Bill" and other measures which were submitted to Parliament though not discussed by it, between 1878 and the present time.

As one of the members of the Copyright Committee of the Author's Society, I had some little share in directing the progress of the present Bill before it was entrusted to Lord Monkswell. May I be permitted to state that the utmost care was taken by that Committee to represent and give effect, so far as was reasonably practicable, to the views of all whose interest was likely to be involved?

J. M. LELY.

The Temple,
February 9th, 1891.

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THE LAW, THE MISCHIEF, AND THE REMEDY.

I.

THE LAW, THE MISCHIEF, AND THE REMEDY.

The Existing Law.*

Meaning of "Copyright."—The term copyright means the sole and exclusive right of printing or in any other way multiplying copies of books, pictures, statues, musical scores, lectures, or any other subject to which the term is applied.†

History.—The first Copyright Act was the act of Anne (8 Anne, c. 19.), passed in 1709, which applied to "books and writings" alone, and gave to authors of books then existing a copyright for 21 years, and to authors of books to be in future published a copyright for 14 years from publication. Whether any and what copyright existed before this Act is a much-vexed question which has never been authoritatively settled, and probably never will be. The effect of the Act, however, was beyond doubt to substitute a fixed statutory right for an indefinite common law right, whatever that pre-existing right was. So it was decided by the House of Lords in 1774.‡

The preamble of the Act of Anne is noticeable. It recites that, "printers, booksellers, and other persons

* See the Digest of Sir J. Fitzjames Stephen, Q.C. (now Mr. Justice Stephen) appended to the Report of the Royal Commission of 1878, hereinafter referred to as "Steph. Dig."; *Copinger on Copyright*, 2nd ed., A.D. 1881; *Shortt on Literature and Art*, 3rd ed., A.D. 1884; *Scrutton on Copyright*, 2nd ed., 1890.

† See Act of 1842, s. 2.

‡ In Donaldson *v.* Becket, 2 Brown's *Parliamentary Cases*, 129.

" have of late frequently taken the liberty of printing, " reprinting, and publishing books and other writings " without the consent of the authors or proprietors of " such books and writings to their very great detriment, " and too often to the ruin of themselves and their " families," and then proceeds to give the 14 years' copyright, " for preventing such practices for the future, and " for the encouragement of learned men to compose and " write useful books." This shows that the Act was not merely intended to be for the benefit of authors, but for the benefit of the public also, being in fact partly based upon the policy of the first Patent Act, commonly called the " Statute of Monopolies," which, in the reign of James the First, had conferred a 14 years' monopoly upon the true and first inventor of new manufactures within the realm. The interest of the public, moreover, was specially safeguarded by the curious provision, soon afterwards repealed, that the Archbishop of Canterbury, sitting in consultation with the Lord Chancellor and the judges of the land, should have power to settle the prices of books upon complaint, made good, that unreasonable prices were exacted—a provision which is the origin of the existing restricted enactment, by which the Judicial Committee of the Privy Council may, after the death of an author, license the republication of books which the proprietor of the copyright refuses to republish.

Between 1709 and 1842 the following Acts were passed:—*

In 1735, 8 Geo. 2. c. 13., giving copyright in engravings.

In 1739, 12 Geo. 2. c. 36., to prohibit the importation of British books reprinted abroad, and repeal so much of the Act of Anne as empowered the limiting of the prices of books (repealed).

In 1767, 7 Geo. 3. c. 38., to render the Act of 1735 more effectual.

* One or two Acts of small importance are omitted from our list.

In 1777, 17 Geo. 3. c. 57., to render the Acts of 1735 and 1767 still more effectual.

In 1798, 38 Geo. 3. c. 71., giving copyright in busts and new models (repealed).

In 1801, 41 Geo. 3. c. 107., extending copyright in books for 14 years more, if author still living at the end of the first 14 years (repealed).

In 1814, 54 Geo. 3. c. 56., giving copyright in every kind of sculpture.

In 1814, 54 Geo. 3. c. 156., extending copyright in books to a term of 28 years certain, and the residue of the life of the author (repealed).

In 1833, 3 Will. 4. c. 15., giving author of play sole liberty of representation.

In 1835, 5 & 6 Will. 4. c. 65., to prevent the publication of lectures without consent.

In 1838, 1 & 2 Vict. c. 59., the first International Copyright Act (repealed).

The preamble of the Act of 1842, 5 & 6 Vict. c. 45. recites that, "it is expedient to amend the law of copyright, "and to afford greater encouragement to the productions "of literary works of lasting benefit to the world." This Act is sometimes called Talfourd's Act, from its being founded on a Bill first introduced in 1837 by Serjeant, afterwards Mr. Justice Talfourd, the author of "Ion." It was in fact piloted through the House of Commons by Lord Mahon, who, as Lord Stanhope, was more than 30 years afterwards appointed chairman of the Copyright Commission, but died before the Commission had held any sittings. The House of Commons debates furnish very instructive reading on the subject. Talfourd had proposed, in 1841, that the copyright term should be the life of the author and 60 years after the death of the author; but though he professed himself willing to accept a term of life and 30 years, his Bill, brilliantly and vigorously opposed by Macaulay, was rejected. Lord Mahon's proposal was for a term of life and 25 years, but Macaulay suggested and carried a term of 42 years or life, whichever should be the

longer, which, on the motion of Sir Robert Peel, was altered in favour of authors to the existing term of *forty-two years from publication, or till seven years from the death of the author, whichever shall be the longer.*

By this Act also the provisions of the Act of 1833, as to dramatic copyright, were extended to musical compositions, and the term of both dramatic copyright and musical copyright was assimilated to that of copyright in books.

Since 1842 the following Acts have been passed:—

In 1844, 7 Vict. c. 12., the principal existing International Copyright Act.

In 1847, 10 & 11 Vict. c. 95., the Foreign Reprints Act, allowing the suspension, by Order in Council, of the prohibition of importation of pirated books into the Colonies.

In 1852, 15 Vict. c. 12., an International Copyright Act, allowing translations of political articles in foreign periodicals to be published here.

In 1862, 25 & 26 Vict. c. 68., for the first time giving copyright in paintings, drawings, and photographs.

In 1875, the Canada Copyright Act, 1875, 38 & 39 Vict. c. 53., to allow the Royal Assent to be given to the Canadian "Copyright Act of 1875."

In 1876, the Customs Consolidation Act, 1876, 39 & 40 Vict. c. 36. s. 42, by which there is a prohibition of importation of, and a forfeiture and power of destruction of, "Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire."

In 1882, the Copyright Musical Compositions Act, 45 & 46 Vict. c. 40., to protect the public from vexatious actions for unauthorized performances of musical compositions.

In 1886, the International Copyright Act, 49 & 50 Vict. c. 33., to enable Her Majesty to accede to the Berne convention.

In 1888, a second Copyright Musical Compositions Act further to amend the law in the subject matter of the Act of 1882.

Summary.—Under these Acts, the term of copyright varies with the subject-matter of it.

In books, &c., the term is 42 years from publication, or life of the author and 7 years, whichever is the longer.

With regard to magazine, &c. articles, there is the following very special provisions :—

If the publisher or proprietor of any encyclopædia, review, magazine, or periodical work, or work published in parts or series, employs and pays persons to compose any volume, part, essay, article, or portion thereof, on the terms that the copyright therein shall belong to such publisher or proprietor, such publisher or proprietor has upon publication the same rights as if he were the author of the whole work (with the following exceptions) :—

1. After 28 years from the first publication of any essay, article, or portion in any review, magazine, or other periodical work of a like nature [not being an encyclopædia], the right of publishing the same in a separate form reverts to the author for the remainder of the term for which his copyright would have endured if the same had been originally published by him elsewhere.
2. During the said term of 28 years the publisher or proprietor may not publish any such essay, article, or portion, separately or singly, without the consent of the author or his assigns.

The author of any such magazine as aforesaid may, by contract with any such publisher or proprietor, reserve the right of publishing any work, his composition, in a separate form, and if he does so he is entitled to copyright in such composition when so published for the same term as if such publication were the first publication, but without prejudice to the right of the publisher or proprietor to publish the same as part of such periodical work.*

In sculpture, the term of copyright is 14 years from first putting forth the sculptured work.

In paintings, drawings, and photographs, the term is the life of the author and seven years after his death. There is, however, this remarkable and anomalous enactment as to the assignment of copyright in paintings, drawings, and photographs,—that if the artist sells them without having the copyright reserved to him by written agreement he

* *Steph. Dig.*, Art. 5.

loses it, but it does not vest in the purchaser unless there is an agreement signed in his favour. If therefore there is no agreement in writing—a very frequent occurrence—the copyright is altogether lost on a sale, though if the work be executed on commission, instead of being sold after being executed, the copyright in the absence of agreement vests in the person for whom it was executed.

In engravings and prints taken by lithography, or other mechanical process, the term is 28 years from the first publication.

In dramatic pieces, the term of copyright is the same as in books, and also includes the sole liberty of representation, or allowing to be represented.

In musical compositions, the term of copyright is the same as in books, and also includes the sole liberty of performance, or allowing to be performed.

In lectures, the term of copyright is 28 years, conditionally on the lecturer having given notice of his intention to lecture to two Justices of the Peace.

"Fair" abridgments may be made by any person without the consent of the author.

Any person may dramatise a novel without the consent of the author, provided only he do not reproduce the exact words of the author.

The extent of newspaper copyright is doubtful, but it is probable that upon registration of the copy sued upon, but not otherwise, the proprietor has copyright in all that the newspaper contains, news and advertisements included.

Defects in the Law of Copyright.

Badness of Form.—It is impossible to exaggerate the badness of the law in point of form. Let this branch of the law be placed on the statute book in whatever form conceivable, it must always present great and special difficulties

to the draftsman. As it is, the language is bad, the arrangement is bad, and that pitfall of the legislator, incorporation by reference, is of frequent occurrence. "This section," says Mr. Justice Stephen of 54 Geo. 3. c. 56. s. 1, relating to copyright in sculpture, "is a miracle of intricacy and "verbosity. It also contains an 'of' which may be a "misprint, as it seems to make nonsense of several lines. . . "It forms a sentence of 38 lines, the first half of which is "repeated in the second half in so intricate a way that "the draftsman appears to have lost himself in the middle "of it." Again, "Part of s. 18 of 5 & 6 Vict. c. 45., is bad "grammar. The words 'and paid for' should probably "be 'and should be paid for.'" "The law," say the Copyright Commissioners, "is wholly destitute of any sort of "arrangement, incomplete, often obscure, and even when "it is intelligible upon long study, it is in many parts so "ill-expressed that no one who does not give such study to "it can expect to understand it." There are now eighteen Copyright Acts, and it cannot be said that even the recent statutes dealing with copyright in musical compositions show much improvement in form upon those which preceded them, though the International Copyright Act of 1886 forms a bright exception amongst a mass of generally obscure matter.

Defects of Existing Law in Substance.—Copyright, as we have seen, runs in most cases from the date of publication. Now, not only it is often difficult to ascertain the date of publication, but in the case of an author who publishes many works, great practical inconvenience has resulted from the copyright in different works by the author expiring at different dates. Especially will this inconvenience be great if the works form parts of a series, as happened in the case of the cantos of Childe Harold.

The term of copyright in music not printed and published is doubtful, *and may perhaps be perpetual.*

The distance of time, 28 years, which must elapse before the copyright in a magazine article reverts to the author, is far too long. Proprietors of periodicals have not as a rule insisted on the right given them by the existing law, and there has been no reason why they should. Most magazine articles are so essentially ephemeral, that magazines as a whole are seldom if ever reprinted. In cases where reprinting of particular articles would pay, they would generally require revision by the author. Moreover, it may be very difficult in many cases to discover the proprietor of a magazine copyright, after the lapse of a few years from the insertion of an article which the author may wish to republish.

There is a great conflict of judicial opinion on the point whether a foreign author must be residing in the British dominions at the time of the publication of a book in the United Kingdom in order to obtain copyright therein.*

The Remedies proposed by Lord Monkswell's Bill.

The Bill which Lord Monkswell has kindly taken charge of at the request of the Incorporated Society of Authors has two distinct objects. First, it is a consolidating Bill, and secondly, it is an amending Bill. As a consolidating Bill it will reduce into one Act all the confused statutes on the subject, repealing the whole series of them (except the Canada Copyright Act, 1875), and re-enacting them in consistent and intelligible language, with such amendments as have been thought desirable. The amendments are for the most part, but not entirely, those suggested by a Royal Commission which reported in 1878. Copious extracts from that Report, and the memorandum prefixed to the Bill, showing in what respect, if any, and for what reasons, that Report was not followed, are printed hereafter (see

* See Routledge *v.* Low, L.R. 3, H.L. 100.

Chapter IV.) with a few extracts from the Bill and criticisms on its most important clauses. But it will be well to point out here, and at once, the most important amendments.

Term of Copyright.—This is to be the life of the author and 30 years afterwards in respect of books and every other subject matter of copyright, except in the case of engravings and photographs, in respect of which the term is to be 30 years from publication, and of anonymous and pseudonymous works. It is of importance to point out that in fixing life and a term beyond life, instead of a term dependent on the date of publication, the law of European countries generally in relation to literary copyright has been followed, and also that the 30 years beyond life is a shorter term than that fixed by the law in most other countries. In France, Russia, Spain, Portugal, Denmark, Norway, and Sweden, for instance, the term is life and 50 years; in Italy, life and 40 years. The term proposed by the Bill, life and 30 years, is that prevailing in Germany, both for literary and artistic copyright. Only in Belgium and Holland, where the term is life and 20 years, and in Greece, where the term is 15 years from publication, does the term for literary copyright appear to be shorter than that proposed by the Bill. In the United States of America, the term is 28 years from registration, with a power of further extension for 14 years more, at the end of the term.* There is also copyright in Brazil, Chili, Japan, and Mexico, in which latter country literary copyright is perpetual, while the right of representation of dramatic and musical works lasts for the life of the author, and for 30 years after his death.† The Argentine Republic, Egypt, Paraguay, Peru, and Uruguay, are believed to be the only countries in the civilized world which possess no law on copyright.

* The whole of the law of foreign countries as to copyright will be found exhaustively detailed in *Copinger*, 2nd edition (A.D. 1881), ch. xviii.

† *Copinger*, p. 567.

Term of Copyright in Magazine Articles.—The special provisions of the existing law as to this have been already set forth, and so have the reasons for altering them. The Bill reduces the period after which the copyright in the articles, &c., is to revert to the author from 28 years to 3—a very great reduction, no doubt, but not apparently going too far, inasmuch as all possibility of competition between the article as separately reprinted and as appearing in the magazine will in that time have been removed.

Abridgments.—As to these, the Bill provides that every abridgment is to be an infringement of the copyright in the work abridged, unless it be made with the consent of the owner of the copyright. Sir James Stephen, it must be mentioned, dissented from his brother Commissioners as to this alteration, being of opinion that "the question whether "any given abridgment is substantially an original work or "not is capable of being determined by a Court of law in a "more or less satisfactory way," and that "any statutory "rule on the subject is likely to lead to great practical diffi-"culties, and would be liable to evasion." Looking at the present rapidly increasing mass of literature of all kinds, abridgments should no doubt be encouraged, and in many cases they promote the sale and fame of the work abridged. But there seems no reason why the person without whom the abridgment would have been impossible should not have some voice in the matter. If doubtful questions should arise, that is only a reason for giving the consent required on easy terms.

Dramatisation of Novels.—This has been a burning question for some time, and in the Little Lord Fauntleroy case,* in which the novelist succeeded in preventing dramatisation, the law was perhaps strained to bring it more into accordance with justice.

* Warne *v.* Seebohm, 39 Ch. D. 73.

The Bill simply provides that in the case of a work of fiction it is to be an infringement of the copyright of a book if any person, without the consent of the copyright owner, "take the dialogue, plot, or incidents related in the "book and use them for, or convert them into, or adapt "them, for a dramatic work, or knowing such dramatic "work to have been so made, shall permit or cause public "performance of the same"; and conversely the novelisation of dramas, without the consent of the owner of the copyright in the drama, is also prohibited.

Newspaper Copyright.—The term "book" being expressly defined as including "newspaper," it is proposed that the copyright in newspapers should endure for the same term as that of copyright in books; but it is also proposed that such copyright shall extend only to "articles, paragraphs, "communications and other parts which are compositions "of a literary character, and not to any articles, &c. which "are designed only for the publication of news or to adver-"tisements." It is also proposed that the registration of a newspaper, which is required by the Newspaper Libel and Registration Act, 1881, shall be equivalent to the registration which is to be required before action can be brought for an infringement of copyright.

Artistic Copyright.—In dealing with artistic copyright, the Bill differs in one important respect from the recommendations of the Royal Commission. That Commission recommended that the copyright in paintings, drawings, and photographs should "follow the ownership," that is, should belong to the purchaser unless specially reserved to the artist. The Bill, following a Fine Arts Bill which has been frequently before the House of Commons, and once passed a second reading in that House, proposes that the copyright shall remain in the artist, unless specially reserved to the purchaser. It is also proposed that the painter of a portrait on commission is not to be allowed to

repeat it, that a replica is not to be made without the leave of the owner of the original, and that "sketches, studies, "models and casts used in executing a work of fine art may, "although the copyright in that work shall have been sold, "be sold or again used, so only that no replica or other re- "petition or any colourable imitation of the same work or "the design thereof be made." Copyright in works done by an assistant is to belong to his employer. Provision is made for the seizure of piratical copies of works of art when hawked about or offered for sale.

Photographs.—The exhibition of photographs taken on commission without the consent of the person giving the commission is prohibited.

Registration of Copyright.—It is proposed that registration, as a condition precedent to the recovering damages for infringement should be made practically compulsory in respect of any subjects of copyright, except paintings and sculpture. This is to be effected by a provision that no proceedings at all may be taken before registration, and that a penalty must be paid to admit of the recovery of damages incurred before registration.

Copyright Registration Office.—It is proposed that a Government "Copyright Registration Office" should supersede the existing "Stationers' Hall," which, however, is to be maintained for the present, in consequence of the Bill not interfering with existing copyrights.

Rights of Foreigners.—The doubt whether a foreigner must be resident within the British dominions at the time of publication, is solved in favour of the foreigner, who by publication in any part of the British dominions becomes entitled to copyright in any part of those dominions whereever he may be resident at the time of publication.

International Copyright.—In respect of international copyright, the Bill merely reproduces the existing law as

recently settled by the International Copyright Act of 1886, passed to enable Her Majesty to accede to the Berne Convention, printed hereafter in Appendix B. In view however, of the recent American Copyright Bill, printed hereafter in Appendix C., and the discussions which have arisen thereupon, it is important to point out that the Bill, similarly to the existing statutes, is absolutely silent on the question whether the American Bill is to be met by any retaliatory measures or not, leaving such a question to be dealt with, similarly to any other question with a foreign country, by Order in Council to the same extent as and no further than it may be dealt with under the existing law.

Existing Copyrights.—This brings us to a subject of great practical importance. In accordance with a well known rule of law, it is proposed that the Bill shall not be retrospective, and that all the Acts which it is proposed to repeal with respect to future copyrights shall continue in full force with respect to existing copyrights. This proposal, looking to the extreme obscurity of the existing law, may cause some practical inconvenience. And it is suggested that as far as possible, while existing rights are preserved, the remedies for infringing the new rights and the remedies for infringing the old rights should be the same. It should also be carefully and expressly enacted that the proposed alterations as to abridgments, dramatisations, &c., are equally to apply whether the book abridged or dramatised, &c., is published before the Act or after it.

Another branch of this subject is of even greater importance. By clause 7 it is proposed that—

(1.) The copyright or performing right which at the time of the passing of this Act shall be subsisting in any book or other subject of copyright or performing right theretofore published, sold, or disposed of (as the case may be), shall endure *for the term limited by the existing enactments, or for the term fixed by this Act, whichever is the longer*, and shall be the property of the person who at the time of passing this Act shall be the proprietor of such copyright or performing right.

(2.) Provided always, that in all cases in which such copyright or performing right shall belong in whole or in part *to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection*, such copyright or performing right shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing this Act, and no longer, unless the original copyright owner, if he shall be living, or his personal representative if he shall be dead, and the proprietor of such copyright or performing right shall, before the expiration of such term, agree to accept the benefits of this Act in respect of such book or other subject of copyright or performing right, and shall cause a minute of such consent in the form in that behalf given in Schedule Three to this Act to be entered in the proper register, in which case such copyright or performing right shall endure for the term fixed by this Act, and shall be the property of such person or persons as in such minute shall be expressed.

This just clause, which may happen to be very advantageous to some authors who have sold their copyrights, is modelled on s. 4 of the Act of 1842 (which in its turn was modelled on s. 8 of the Act of 1814), and was recommended by the Royal Commission of 1878.

Such are the leading heads of Lord Monkswell's Bill, which will now shortly come on for second reading in the House of Lords.

In that House the Bill will have the advantage of being offered to the criticism of the three surviving Parliamentary members of the Royal Commission of 1878, namely, the Duke of Rutland, Lord Herschell, and Lord Knutsford.

II.

EXTRACTS

FROM

REPORT OF COPYRIGHT COMMISSION.

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PRELIMINARY NOTE.

THE extracts here given have been made with the view of presenting to the ordinary reader all that is material at the present day in the Report of the Commission. The terse and expressive language of the Commissioners has been left unaltered.

The Commission, which owed its origin to the Canadian Bill of 1875, which is scheduled to the Imperial Canada Copyright Act 1875, 38 & 39 Vict. c. 53., was dated 17th April 1876 (a prior Commission of 1875, of which Lord Roseberry was one of the members, being revoked in consequence of the death of its Chairman, Lord Stanhope), and the report is dated 24th May 1878.

The Commissioners were, Lord John Manners, M.P., (now Duke of Rutland) the Earl of Devon (since deceased), Sir Charles L. Young (since deceased), Sir Henry Holland (now Lord Knutsford), Sir John Rose (since deceased), Sir H. Drummond Woolf, Sir Louis Mallet (since deceased), Sir Julius Benedict (since deceased), Farrer Herschell Esq., Q.C. (now Lord Herschell, and sometime Lord Chancellor), Edward Jenkins, Esq., M.P., Sir James Fitzjames Stephen, Q.C. (now Mr. Justice Stephen), William Smith, Esq., D.C.L., J. A. Froude, Esq., Anthony Trollope, Esq. (since deceased), and F. R. Daldy, Esq. The Secretary of the Commission was J. Leybourn Goddard, Esq., Barrister-at-Law.

As many as three of the surviving Commissioners therefore, the Duke of Rutland, Lord Knutsford, and Lord Herschell, are members of the present House of Lords, whereas the Commission is wholly unrepresented in the present House of Commons.

The Commissioners may be said to have been practically unanimous. For extent and effect of the various dissents, see p. 70 post. Sir Louis Mallet did not sign the Report, but presented a separate report of his own. For extracts therefrom, see p. 72.

In the Appendix to the Report of the Commission is an admirably lucid table, containing a complete digest of the law as it stood in 1878, with a statement of the amendments proposed by the Commissioners. This was the work of Mr. Justice Stephen, then Sir James Fitzjames Stephen, Q.C., one of the Commissioners.

II.

EXTRACTS

FROM

REPORT OF COPYRIGHT COMMISSION.

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HOME COPYRIGHT.

2. The first object to which we directed our attention in relation to Home Copyright, was to obtain a clear and systematic view of the law in force upon the subject in this country.

3. *Division of Subject.*—We find that it relates to copyright in seven distinct classes of works, namely,—

(1) Books;
(2) Musical compositions;
(3) Dramatic pieces;
(4) Lectures;
(5) Engravings and other works of the same kind;
(6) Paintings, drawings, and photographs; and
(7) Sculpture.

4. The law as to copyright in designs did not appear to us to fall within the terms of Your Majesty's Commission. It differs in many important particulars from the other matters which we have mentioned, and it has been recently made the subject of legislation.

5. *Sources of the Law.*—The law of England, as to copyright in the matters above enumerated, consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports.

6. Our colleague, Sir James Stephen, has reduced this matter to the form of a Digest, which we have annexed to our Report, and which we believe to be a correct statement of the law as it stands.

7. *Form of Law bad.*—The first observation which a study of the existing law suggests is that its form, as distinguished from its substance, seems to us bad. The law is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it.

8. The common law principles which lie at the root of the law have never been settled. The well-known cases of *Millar* v. *Taylor*,* *Donaldson* v. *Becket*,† and *Jeffries* v. *Boosey*,‡ ended in a difference of opinion amongst many of the most eminent judges who have ever sat upon the Bench.

9. The fourteen § Acts of Parliament which deal with the subject were passed at different times between 1735 and 1875. They are drawn in different styles, and some are drawn so as to be hardly intelligible. Obscurity of style, however, is only one of the defects of these Acts. Their arrangement is often worse than their style. Of this the Copyright Act of 1842 is a conspicuous instance.||

10. The piecemeal way in which the subject has been dealt with affords the only possible explanation of a number of apparently arbitrary distinctions between the provisions made upon matters which would seem to be of the same nature. Thus—

(*a*) The term of copyright in books, and in printed and published dramatic pieces and music, is the life of the author and seven years after his death, or 42 years from the date of publication, whichever is the longer.

(*b*) The term of copyright in music not printed and published but publicly performed is doubtful, and may perhaps be perpetual.

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* 4 *Burrows*, 2303 (1769).

† 2 *Brown's Parliamentary Cases*, 129 (1774).

‡ 4 *House of Lords Cases*, 815 (1854). In all three cases the question whether there is any copyright independently of statute was discussed. In "Jeffries *v.* Boosey" there was also a question as to the copyright of Signor Bellini in the *Somnambula*.

§ Now eighteen.

|| The bill which became the Act of 1842, 5 & 6 Vict. c. 45., was originally introduced by Serjeant Talfourd in 1837. He having been raised to the Bench, it was introduced in the House of Commons in 1842 by the late Lord Stanhope, then Lord Mahon. In 1841 and 1842 Macaulay took a conspicuous part in the debates, and in 1842 carried a proposal that the statutory period should be forty-two years or the life of the author, Lord Mahon's proposal being for twenty-five years from the death of the author, and never less than twenty-eight years. The present term of forty-two years from publication or till seven years from the death of the author, whichever should be the longer, was inserted on the motion of Sir Robert Peel.—*Scrutton on Copyright*, 2nd ed., p. 46.

(*c*) The term of copyright in a lecture not printed and published but publicly delivered is wholly uncertain. The term of copyright in a lecture printed and published is the longer of the two periods of 28 years and the life of the author. It may perhaps be doubted whether the term of copyright in a book consisting of a collection of lectures would differ from the term of copyright in other books.

(*d*) The term of copyright in engravings, &c., is 28 years from publication; in paintings, &c., the artist's life and seven years; in sculpture, 14 years from the first "putting forth or publishing" of the work (an indefinite phrase), 14 years more being given to the sculptor if he is living at the end of the first term.

11. Other singular distinctions exist as to the law relating to registration of copyrights. No system of registration is provided for dramatic copyright, or for copyright in lectures or engravings. Such a system is provided for copyright in books and paintings, but its effect varies. Registration must in either case precede the taking of legal proceedings for an infringement of copyright, but after registration the owner of copyright in a book may, while the owner of copyright in a painting may not, sue the persons who infringed his copyright before registration.

12. The law is not only arbitrary in some points, but is incomplete and obscure in others. The question whether there is such a thing as copyright at common law, apart from statute, has never been decided, and has several times led to litigation. Some sort of copyright has been recognized in newspapers,* but it is impossible to say what it is. . . .

13. *Consolidation recommended.*—Upon all these grounds we recommend that the law on this subject should be reduced to an intelligible and systematic form. . . .

* * * *

Necessity for Copyright.

16. . . . Taking the law as it stands, we entertain no doubt that the interest of authors and of the public alike requires that some specific protection should be afforded by legislation to owners of copyright; and we have arrived at the conclusion that copyright should continue to be treated by law as a proprietary right, and that it is not expedient to substitute a right to a royalty defined by statute, or any other right of a similar kind.

* * * *

* See clause 19 of Lord Monkswell's bill, post.

The Term of Copyright.—Books.

23. The term of copyright is the next subject to which our attention has been called. We have already used this as an illustration of the anomalies and distinctions which have grown up in the law of copyright. The term of copyright in books is for the life of the author and seven years after his death, or for 42 years from the date of publication, whichever period may happen to expire last.*

24. We purpose for the present to confine our remarks to copyright in books and other literary works comprehended under that term—that is to say, "every volume, part or division of a volume, "pamphlet, sheet of letter-press, sheet of music, map, chart, or "plan, separately published."

25. It has been urged against the present regulations for the term of copyright in books—1st. That the period is not long enough:—2ndly. That copyrights in works by the same author generally expire at different dates:—3rdly. That, owing to the difficulty of verifying the date of publication, it is scarcely possible to ascertain the termination of the copyright. In addition to these objections, others have been stated which it is needless for us to specify in this place.

26. We have already stated that we consider some kind of protection in the nature of copyright desirable; and it appears to us that the existing terms are not more than sufficient, if indeed they are sufficient, to secure that adequate encouragement and protection to authors which the interests of literature, and therefore of the public, alike demand from the State. We proceed, therefore, to call attention to the three objections, above mentioned, to the present duration of copyright.

27. First, the period is said not to be long enough. The chief reasons for this assertion are that many works, and particularly those of permanent value, are frequently but little known or appreciated for many years after they are published, and that they do not command a sale sufficient to remunerate the authors until a considerable part of the term of copyright has expired. Some works, as, for instance, novels by popular authors, command an extensive sale and bring to the authors a large remuneration at once, but the case is altogether different with others, such as works of history, books of a philosophical or classical character, and volumes of poems.† In some instances works of these kinds

* Act of 1842, 5 & 6 Vict. c. 45. s. 3.

† See Macmillan (Q. 227) in favour of perpetual copyright, citing the instance of Wordsworth; Longman (Q. 274) in favour of longer copyright than at present; Blackwood (Q. 809–811) in favour of life and fifty years, as in France; and Herbert Spencer (Q. 4833 *et seq.*) in favour of longer duration of copyright.

have been known to produce scarcely any remuneration, until the authors have died and the copyrights have nearly expired. It is also urged that in the case of many authors who make their living by their pens, their families are left without provision shortly after their deaths, unless their works become profitable very soon after they are written.

28. These arguments and others of a like kind, which will be found not only in the evidence we have taken, but in the debates in Parliament,* are in our opinion of great weight, but on the other hand we do not lose sight of the public interest, which, it has been urged upon us, would be prejudiced by prolongation of copyright. Greater freedom of trade and competition are said to be desirable, that books may be more abundant in supply and cheaper in price.

29. The second objection to the present duration of copyright is, that copyrights belonging to the same author generally expire at different dates. That it is well founded is manifest, for if an author writes several works, or one work in several volumes which are published at different times, as is frequently the case, the copyrights will expire forty-two years from the respective dates of publication, unless the author happens to live so long that the period of seven years after his death is beyond forty-two years from the publication of his latest work or volume.

30. Under the present system, moreover, copyright in an earlier edition expires before copyright in the amendments in a later edition of the same work. We have had evidence that in one case the first and uncorrected edition of an important work was republished before the expiration of the copyright in the later and improved editions. But if the alteration in the existing term of copyright, which we suggest hereafter, were adopted, namely, that it should be for the life of the author and a fixed number of years after his death, all the copyrights of the same author would expire at the same date, and it would then be open to any publisher to put out a complete edition of all the author's works, with all the improvements and emendations which have appeared in the last edition, in a uniform shape and at a uniform price.

31. The third objection to the present duration of copyright is that it is frequently difficult, if not impossible, to ascertain its termination, owing to the fact that the expiration of the period depends upon the time of publication. It is in most cases easy to ascertain the date of a man's death, but frequently impossible to fix with any certainty the date of the publication of a book. Under the present law it is uncertain what constitutes publication; but whatever may be a publication sufficient in law to set the period of copyright running, it generally takes place in such a

* See *Hansard*, lvi., 340; lxi., 1349; lxiii., 778.

manner that the precise date is not noted even if known. It is sometimes said that the date printed in the title page of a book should be considered the date of publication, but books are frequently post-dated, and in many cases bear no date at all. This objection is one which, in our opinion, should be removed.

32. The remedy which suggests itself to us as the most likely to effect all the desired objects is, that instead of the period of copyright being, as at present, a certain number of years from publication, it should last for the life of the author and a fixed number of years after his death.

33. We have been influenced in advising this change in the law by the consideration that it will have the effect of assimilating the term of copyright in books to that of copyright in works of fine art, the duration of which, for reasons to be hereafter stated, is for the life of the author and a certain number of years after his death. And further, as this mode of computing the duration of copyright has been adopted by the great majority of foreign countries, the change in our law may facilitate the making of international copyright arrangements with other States.

34. Before proceeding further on this point we think it right to notice a suggestion that has been made to us, on the assumption that the duration of copyright would continue to be for a fixed period of years. It has been proposed that, instead of the present term of 42 years from publication, the original right should last for 28 years only, but that it should be renewable for a further period of 14 or 28 years by re-registration by the author or his personal representatives; * and this is, we learn, the law in the United States and Canada. The reasons advanced for this proposal are, that if copyrights are sold, publishers, as a rule, will not give more for the whole of the present term of 42 years than they would if there were only 28 years that they could purchase; that authors could thus, without any pecuniary loss, sell their copyrights for the first period only, and, if their works proved of great and lasting value, would not have finally parted with all their interest, but would be entitled to the second term of 14 years, by which they or their families would receive a due reward for their labours.

35. There is, no doubt, considerable force in the argument, but we would observe that the advantages held out by the change of law would not be secured unless, first, the copyright is sold, and secondly, the author is debarred by law, not only from selling, in the first instance, more than the copyright in the term of 28 years, but even from giving any binding undertaking to secure to the purchaser, either by re-registration or otherwise, the advantages of the subsequent term of 14 years.

* See Daldy (Q. 974); Sharon Grote Turner (Q. 1523); both of whom represented the views of the Copyright Association.

36. Now, whatever may be the practice in the United States and Canada, we are satisfied from the evidence that in this country many authors do not sell their copyrights, and in such cases no advantage would arise from the proposed change. And, with respect to the second point, we are not satisfied that the advantages expected from the scheme counterbalance the disadvantage of interfering by law with freedom of contract.

37. Should our suggestion, that copyright in future should endure for the life of the author and a fixed number of years after his death, be adopted, the proposal to divide the present, or any other fixed term is of course inapplicable.

38. Assuming, therefore, that the duration of copyright is to be for the life of the author and a certain number of years after his death, we have next to consider what the number of years should be. According to the existing law, the period in the case of books is life and seven years or 42 years from publication, if that period is the last to expire; and the period for copyright in paintings, drawings, and photographs has been fixed at life and seven years.

39. *Terms of Copyright in Foreign Countries.*—We find considerable variety in the terms fixed in other countries, but putting aside the United States, which seem to have adopted our existing term with modifications, we find that the more important nations have adopted terms longer than our own. Thus, the term in France is the life of the author and 50 years; in Belgium, life and 20 years; in Germany, life and 30 years; in Italy, life and 40 years, with a second term of 40 years, during which other persons than the proprietor may publish a work on payment of a royalty to him; in Russia, life and 50 years; in Spain, life and 50 years; in Portugal, life and 50 years; and in Holland, life and 20 years. These terms are subject to sundry modifications and conditions which it is unnecessary for us to enter into, but while we consider it expedient that the existing term of copyright should be altered, we think that the terms fixed by the nations we have referred to are in some cases excessive and unnecessary.

40. *Life and* 30 *years.*—Upon the whole we suggest the term adopted by Germany, viz., life and 30 years, as most suitable for Your Majesty's dominions. We are, however, of opinion that, in the event of an international agreement being concluded, by which a common term is fixed for copyright in all countries, power should be given to Your Majesty to adopt, by Order in Council, in lieu of the above term of life and 30 years, the term fixed by such international arrangement.

41. We further suggest that in the case of posthumous and anonymous works and of encyclopædias, the period should be 30 years from the date of deposit for the use of the British Museum.

In the case of anonymous works the author should be allowed, during the period of 30 years, by printing an edition with his name attached, to secure the full term of life and 30 years.

42. Should these suggestions be adopted, we think that it would be desirable that copyrights in existence at the time of the passing of the Act should be extended, subject to a proviso like the one contained in section 4 of the Copyright Act of 1842, guarding against the alteration of existing contracts between authors and publishers. In no case should the duration of existing copyrights be abbreviated.*

43. One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided † that in the case of encyclopædias, reviews, magazines, periodical works, and works published in a series of books, or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles, or portions of reviews, magazines, or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copyright, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight.‡ As we have reason to believe that proprietors of periodicals have not, as a rule, insisted on the right given them by the existing law, we thing there would be no objection to making this provision retrospective.

44. It has been pointed out to us that, under the existing law, the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is

* See clause 7 of Lord Monkswell's bill.
† By the Act of 1842.
‡ See clause 16, sub-s. 2, of Lord Monkswell's bill.

about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorised separate publication.

University Copyright.

45. In connexion with the subject of the term of copyright we have to notice the perpetual copyrights possessed by certain universities and schools, which form exceptions to the general law by which copyright is limited to a definite number of years.

46. We find that the Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrews, and Aberdeen, each college or house of learning at the Universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, have for ever the sole liberty of printing and reprinting all such books as have been, or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for a limited term.

47. To ascertain the value of this exceptional right to the institutions interested, we communicated with the authorities at the Universities of Oxford and Cambridge, and asked the number of copyrights possessed by them in perpetuity under this provision of the law. We found that the University of Oxford possesses six copyrights and that the University of Cambridge has none.

48. This fact shows that the privilege, which is by no means of recent origin, is of very little real value, and as it is undesirable to continue any special and unusual kinds of copyright, we are of opinion that this exceptional privilege should be omitted from the future law. We do not, however, think it would be right to deprive the institutions above named of the copyrights they already possess, without their consent, but should they be retained, we suggest that the universities and other institutions should be placed upon the same footing as regards the protection of their copyrights as other copyright owners, and that the exceptional penalties and remedies given by the Act which was passed in the 15th year of the reign of his late Majesty King George III. should be repealed.

Place of Publication.

* * * *

58. We recommend, . . generally, that where a work has been first published in any one of Your Majesty's possessions, the proprietor of such work shall be entitled to the same copyright,

and to the same benefits, remedies, and privileges in respect of such work, as he would have been entitled to under the existing Imperial Act, if the work had been first published in the United Kingdom.*

59. With regard to publication in foreign states the law now is that, except under treaty, no copyright can be obtained if a book has been published in any foreign country before being published in the United Kingdom, but it is doubtful whether contemporaneous publication in this and a foreign country would prevent the acquisition of copyright here.

60. It is a grave question whether it is desirable that the condition requiring first publication in this country should continue, and whether the reason advanced for this condition, namely, that it is advantageous to this country that works should be first published here, outweighs the hardship that may be inflicted upon British authors by preventing them from availing themselves of arrangements which they might otherwise make with foreign or colonial publishers.

61. We have come to the conclusion that a British author, who publishes a work out of the British dominions, should not be prevented thereby from obtaining copyright within them by a subsequent publication therein. Yet we think that such re-publication ought to take place within three years of the first publication. And we may add, that we think the law should be the same with reference to dramatic pieces and musical compositions first performed out of Your Majesty's dominions, even though they are not printed and published;—in other words, that first performance in a foreign country should not injure the dramatic right in this country. It has been decided under the 19th section of the International Copyright Act, that the writer of a drama loses his exclusive right to the performance of his drama here in England, if it has been first performed abroad; that is to say, representation has been held to be a publication. We see no reason why the rule which may be finally determined upon in reference to first publication of books should not apply to first representation of dramatic pieces. The evidence shows how hardly the present law presses upon British dramatic authors.

62. As to aliens, although we would give them the same rights as British subjects if they first publish their works in the British dominions, it is obvious that the same reason does not exist for giving them copyright if they do not bring their books first to our market; and we therefore recommend that aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright

* This recommendation has been practically carried out by s. 8 of the International Copyright Act, 1886.

for works first published in those dominions. It is to be borne in mind that, even though aliens may be deprived of British copyright by first publication abroad, they may still obtain it in many cases by means of treaties.

Persons capable of obtaining Copyright.

63. With regard to the persons who are capable of obtaining imperial copyright in Your Majesty's dominions, as distinguished from international copyright under treaty, we find that, according to the existing law, the author in order to obtain copyright must be either—

(*a*) A natural-born or naturalized subject of Your Majesty, in which case the place of residence at the time of publication of the book is immaterial; or

(*b*) A person who, at the time of the publication of the book in which copyright is to be obtained, owes local or temporary allegiance to Your Majesty, by residing at that time in some part of Your Majesty's dominions.

64. Besides these it is probable, but not certain, that an alien friend who first publishes a book in the United Kingdom, even though resident out of Your Majesty's dominions, acquires copyright therein. We think this doubt should be set at rest, and that, subject to our previous recommendation as to place of publication by aliens not domiciled in Your Majesty's dominions, the benefit of the copyright laws should extend to all British subjects and aliens alike.

* * * *

Abridgments of Books.

67. Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the Legislature, could govern all cases that occur. There is one form of user of the works of others, however, to which we wish specially to draw attention, as being capable of some legislative control in a direction we think desirable. We refer to abridgments.

68. At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and

it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author.*

69. We think this should be prevented, and, upon the whole we † recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright.

Dramatic Pieces and Musical Compositions.

70. Dramatic pieces and musical compositions, though in some respects differing, are yet so similar that we may couple them together for the purposes of this Report.

71. We have carefully considered the statute law now in force with reference to music and the drama; but from the way in which certain Acts of Parliament have been framed and incorporated by reference, considerable doubt arises in our minds on various important points connected with these subjects.

72. It may be convenient, however, before referring to them more particularly, to notice a difference that exists between books and musical and dramatic works. While in books there is only one copyright, in musical and dramatic works there are two, namely, the right of printed publication and the right of public performance.

73. These rights are essentially different and distinct, and we find that many plays and musical pieces are publicly performed without being published in the form of books, and thus the acting or dramatic copyright is in force, while as to literary copyright such plays and pieces retain the character of unpublished manuscripts. Music printed and published becomes a book for the purpose of the literary copyright, and so, we presume, does a play; but it is a question what becomes of the performing copyright on the publication of the work as a book; and there is a further question, whether the performing copyright can be gained at all, if the piece is printed and published as a book before being publicly performed.

74. With regard to the duration of copyright in dramatic pieces, and musical compositions, we recommend that both the performing right and the literary right should be the same as for books.

75. We further propose, in order to avoid the disunion between the literary and the performing rights in musical compositions and

* See Longman (Q. 269); Daldy (Q. 970); Murray (Q. 228), stating that he had published *Austin on Jurisprudence*, and that Mr. Longman had told him that his (Mr. Longman's) firm had had an offer of an abridgment of it.

† Sir James Stephen dissented from this recommendation.

dramatic pieces, that the printed publication of such works should give dramatic or performing rights, and that public performance should give literary copyright. For a similar reason it would be desirable that the author of the words of songs, as distinguished from the music, should have no copyright in representation or publication with the music, except by special agreement.

Dramatisation of Novels.

76. With reference to the drama, our attention has been directed to a practice, now very common, of taking a novel* and turning its contents into a play for stage purposes, without the consent of the author or owner of the copyright. The same thing may be done with works of other kinds if adapted for the purpose, but inasmuch as novels are more suitable for this practice than other works, the practice has acquired the designation of dramatisation of novels. The extent to which novels may be used for this purpose varies. Stories have been written in a form adapted to stage representation almost without change; sometimes certain parts and passages of novels are put bodily into the play, while the bulk of the play is original matter; and at other times the plot of the novel is taken as the basis of a play, the dialogue being altogether original.

77. Whatever may be the precise form of the dramatisation, the practice has given rise to much complaint, and considerable loss, both in money and reputation, is alleged to have been inflicted upon novelists. The author's pecuniary injury consists in his failing to obtain the profit he might receive if dramatisation could not take place without his consent. He may be injured in reputation if an erroneous impression is given of his book.

78. In addition to these complaints it has been pressed upon us that it is only just that an author should be entitled to the full amount of profit which he can derive from his own creation;—that the product of a man's brain ought to be his own for all purposes;—and that it is unjust, when he has expended his invention and labour in the composition of a story, that another man should be able to reap part of the harvest.

79. On the other hand, it has been argued that the principle of copyright does not prevent the free use of the ideas contained in the original work, though it protects the special form in which those ideas are embodied;—that a change in the existing law would lead to endless litigation;—and that it would work to the disadvantage both of the author and the public. Upon these grounds, or some of them, a bill, introduced by Lord Lyttleton in 1866 and supported by Lord Stanhope, was defeated.

* e.g., *Never Too Late to Mend, East Lynne, Aurora Floyd*, &c.

80. We have fully considered all these points, and have come to the conclusion that the right of dramatising a novel or other work should be reserved to the author. This change would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected.

81. Were this recommendation adopted, a further question would arise, as to the time during which his right should be vested in the author, and, in the event of his not choosing to dramatise his novel, whether other persons should be debarred from making use of the story he has given to the world. We are disposed to think that the right of dramatisation should be co-extensive with the copyright. It has been suggested, in the interest of the public, that a term, say of three or five years, or even more, should be allowed to the author within which he should have the sole right to dramatise his novel, and that it should be then open to anyone to dramatise it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatising uniform in its incidents with other copyright.

Lectures.

82. Lectures are peculiar in their character, and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless it has been thought right by the Legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament,* which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorised persons, the other to protect them from re-delivery.

83. The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by

* 5 & 6 Will. 4. c. 65., and see "Caird *v.* Syme," 12 *Appeal Cases*, 326, in which publication of a student's notes of Professor Caird's Moral Philosophy Lectures was restrained by the House of Lords in 1887.

giving two days' notice of the intended delivery to two justices of the peace living within five miles from the place where the lecture is to be delivered, unless the lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation, in which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies, and 1*d.* for every sheet found in his custody. This law is designed merely to prevent unauthorised publication of lectures by printing, but as has been observed it does not prohibit unauthorised re-delivery.

84. We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition, as to re-delivery, should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death.

85. In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will be become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

86. By the present law, as above stated, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest, that this provision should be omitted from any future law.

87. We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired.

Newspapers.

88. Much doubt appears to exist in consequence of several conflicting legal decisions whether there is any copyright in

newspapers. We think it right to draw Your Majesty's attention to the defect, and to suggest that in any future legislation, it may be remedied by defining what parts of a newspaper may be considered copyright, by distinguishing between announcements of facts and communications of a literary character.

Fine Arts.

89. The next subjects for our consideration were the various branches of the fine arts, consisting of engravings and works of that class, paintings, drawings, and photographs, and lastly, sculpture.

90. It might be supposed that the law relating to engravings, etchings, prints, lithographs, paintings, drawings, and photographs would be the same so far as those matters are capable of being regulated by the same law; but such is not the case. Until the 25th and 26th years of Your Majesty's reign there was no Act of Parliament by which copyright was given for paintings, drawings, and photographs, while engravings, etchings, and prints were protected so long ago as the eighth year of the reign of His late Majesty King George II. Though engravings, etchings, and prints were thus provided for, a doubt arose in process of time whether the Acts then in force would apply to lithographs and other recently invented modes of printing pictures, and it was therefore declared, by an Act passed in the 15th and 16th years of Your Majesty's reign, that the earlier Acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely. It might be questioned whether the language of this Act would not embrace photography, but it seems to have been assumed that it would not, for in the 25th and 26th years of Your Majesty's reign an Act was passed to give copyright in paintings, drawings, and photographs, and the right thus given was placed on an entirely different footing and made subject to different conditions from those to which engravings, etchings, lithographs, and prints are subject.

91. There is at present great diversity in the law as to the duration of copyright in works of fine art. For engravings and similar works the term is 28 years from publication; for paintings, drawings, and photographs, the life of the artist and seven years; and for sculpture 14 years from the first putting forth or publication of the work, and if the sculptor is living at the end of that time, for a second term of 14 years. We do not think it desirable that these distinctions should continue.

92. We understand that the reason for making the term in the case of paintings the life of the artist and seven years, was to avoid the necessity of proving the date of publication, which is, it is said,

in the case of a painting frequently impossible. There would be equal difficulty, it is reasonable to suppose, in proving the date of publication of sculpture, and we have already shown that it exists, to a minor degree, in the case of all literary works. We think it desirable as far as possible to get rid of this difficulty. By adopting as the term the life of the artist and a certain time after death, the result will be attained.

93. Sculpture, though a branch of the fine arts, is essentially different in many points from paintings, engravings, and works of that class; nevertheless we purpose to deal with them concurrently, so far as the subjects permit.

94. It will have been observed that wherever it is possible to place on the same footing the various subjects of copyright of which we have treated in the earlier part of this Report, we have recommended that the law should be assimilated; we propose that all the subjects of fine art shall be dealt with on the same principle so far as they are capable of that treatment.

95. We therefore propose that the term of copyright for all works of fine art, other than photographs, shall be the same as for books, music, and the drama, namely, the life of the artist and 30 years after his death.

96. We further recommend that it should be open equally to subjects of Your Majesty and aliens to obtain copyright in works of fine art, but aliens, unless domiciled in Your Majesty's dominions, should only be entiled to copyright for works first published in those dominions.

Sculpture.*

97. As to sculpture we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be copied in various ways, not only by sculpture and casting, but by engraving, drawing, and photography; and since the rise of photography the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R.A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favour than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving; and he was of opinion that incorrect copying by drawing or engraving might

* Sir James Stephen disapproved of copyright in pictures or statues.

be very prejudicial to the sculptor's reputation. But besides this there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act, but we recommend that such doubts should be removed, and, that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work.

Paintings.*—Assignment of Copyright on Sale of Pictures.

101. The most difficult question with relation to fine arts which we have had to consider, is to whom the copyright should belong on sale of a painting; whether to the artist or to the purchaser of the picture.

102. The present law † on the subject is as follows:—The author of every original painting, drawing, and photograph, and his assigns, have the sole right of copying, engraving, and reproducing it, unless it be sold or made for a good or valuable consideration, in which case the artist cannot retain the copyright, unless it be expressly reserved to him by agreement in writing, signed by the vendee, or by the person for whom the work was executed; but the copyright, in the absence of such agreement, belongs to the vendee or such other person; but it is also provided that a vendee or assignee cannot get the copyright unless at the time of the sale an agreement in writing signed by the artist or person selling is made to that effect. The result is, that if an artist sells a picture without having the copyright reserved to him by written agreement he loses it, but it does not vest in the purchaser unless there is an agreement signed in his favour. If, therefore, there is no agree-

* Sir James Stephen disapproved of copyright in pictures or statues.
† 25 & 26 Vict. c. 68.

ment in writing—a very frequent occurrence—the copyright is altogether lost on a sale, but if the picture is painted on commission, instead of being sold after being painted, the copyright in the absence of any agreement vests in the person for whom the picture is painted.

103. We have taken a good deal of evidence with regard to this matter. It appears that the provision as to pictures painted on commission was made to prevent the unauthorised copying of portraits. Some difficulty, however, is said to have arisen in determining whether an order or a purchase is a commission, so as to bring the picture within such provision.

104. With regard to the general question whether the copyright in a picture should in every case remain with the artist unless expressly sold, or whether it should follow the picture unless expressly retained, the artists as a body are unanimous in their desire to have the copyright reserved to them by law.

105. It is true that if under the present law an artist wishes to retain the copyright he can do so by an express stipulation embodied in an agreement signed by the purchaser. Artists, however, say that this is practically useless, since the purchaser would look upon a proposal for such an agreement as intended to deprive him of part of the value of his purchase. They therefore seldom ask for agreements, preferring that the copyright shall drop. In that case any person who can gain access to a valuable picture may make and sell copies of it in defiance of both artist and owner.

106. It is clearly undesirable that copyrights, which are in many cases of great value, should be in this way left free to piracy. The law, therefore, should distinctly define to whom, in the absence of an agreement, the copyright should belong.

107. In dealing with these questions we have had regard not only to the artist's claims, which have been strongly advocated before us, but also to the interests of the public, and to the consideration whether any distinction should be made between pictures sold after being painted and pictures painted on commission, or between portraits and other pictures.

108. First, as to portraits as distinguished from other pictures. Although artists contend that the copyright in pictures should belong to them notwithstanding a sale, it is admitted by some that an exception to the general rule might be made in the case of portraits, and that copyright in them might properly belong to the purchaser or person giving a commission. The evidence appears to us to prove, first, that the reasons why the copyright in portraits should belong to the person ordering the painting apply equally to other pictures; and, secondly, that it is by no means easy to say what a portrait is. Thus it is open to question whether the word would include the portrait of an animal, a dog for instance,

and if so, whether it would include a number of dogs, or a pack of hounds; or a picture of a house or a room, or any object without life; and further whether it is to include pictures of persons taken in character, not so much for the sake of the portrait of the person, as for the sake of the scene; and, lastly, whether it is to include pictures of persons forming large groups, where the scene is the object of the work, though the pictures of the persons present are portraits.

109. These difficulties lead us on the whole to doubt the expediency of drawing any distinction between portraits and other pictures.

110. Secondly, as to making a distinction between pictures painted on commission and others. We are here met with the difficulty of defining what is a commission; and looking to the evidence upon this point we have arrived at the conclusion that no distinction can practically be made.

111. The only question that remains, therefore, on this branch of our inquiry is, whether the copyright in a picture when sold, should still be vested in the artist, independently of the property in the picture, or whether, unless expressly reserved, it should follow the ownership of the picture.

112. The evidence shows that persons buying pictures do not in general think about the copyright, but that if the subject happens to be mentioned, they are generally under the impression that the copyright is included in the purchase, and are astonished if they are told that it is not. It is said that owing to this fact, an artist, however eminent, when he is selling a picture, shrinks from mentioning the copyright and asking for an agreement to enable him to retain it; he usually prefers that the copyright should be absolutely lost to both parties, as in the absence of any written agreement it would be, under the first section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68.), than that the purchaser should think that he is losing a valuable part of his bargain, and consequently should decline to complete the purchase.

113. The principal reason why artists wish to retain the copyright is to keep control over the engraver and photographer. To artists no doubt this control is a matter of considerable pecuniary value, but they urge that they not only wish to control engraving in order to get the payment from the engraver, but chiefly to prevent inferior engraving, which they consider prejudicial to their reputation. It is admitted that if a picture is sold, the artist would have no power to get it engraved when it is in the possession of the purchaser, except by his consent, and artists are willing that this should continue to be the case; but if this power of preventing engraving is so valuable, it is not easy to see why they should

hesitate to explain the law to the purchaser and offer to let him have the copyright if he will preserve the picture from inferior engraving, rather than let the copyright be lost both to artist and purchaser.

114. This difficulty does not, we may observe, arise in sales to publishers, who, as a rule, purchase for the purpose of engraving, and therefore buy the copyright.

115. Upon the whole, then, the majority of us have arrived at the conclusion that, in the absence of a written agreement to the contrary, the copyright in a picture should belong to the purchaser, or the person for whom it is painted, and follow the ownership of the picture. We may observe that this conclusion, though differing from the Bill of 1862 as originally drawn, and from a draft Bill of 1864, is in accordance with the provisions of the Fine Arts Bill of 1869, which we learn from Mr. Blaine's report, was "prepared by direction of the Council of the Society "of Arts, Manufactures, and Commerce, in consequence of a me-"morial having been presented to the Council by a considerable "number of the most eminent artists and publishers resident in "London." It is further substantially the same as the first section of the existing Act of 1862, except as to the concluding provision in that section, which enacts that the vendee cannot have the copyright unless an agreement to that effect is made in writing. This proviso was apparently added to the Bill without sufficient consideration, during its progress through Parliament.

116. Upon this part of the case we may here refer to a question that has been brought under our notice, namely, whether an artist who has sold a picture should be allowed, without the consent of the owner, to make replicas of it, or whether, as has been suggested, a distinction should be made between replicas made by the artist and copies made by others than the artist. We are not, however, inclined to recognise any distinction; nor indeed, so far at all events as replicas in the same material are concerned, does it appear to be supported by artists.

117. Though in the preceding paragraphs we have spoken only of paintings, the law is the same as to drawings and photographs; and we think that, whatever changes may be made in the law as to paintings, the same should be made with regard to drawings.

118. Photographs, however, present some difficulty. At the present time they are coupled by Act of Parliament with paintings and drawings, and are subject to the same law, but, as we have before pointed out, we believe this circumstance arose merely from the fact that before the year 1862, when the Act was passed, there was no copyright protection afforded by the law for either of these subjects, and it was then thought right that photographs should be protected as well as other works of art. On consideration, however, it will be seen that photographs are essentially different from

paintings and drawings, inasmuch as they more nearly resemble engravings and works of a mechanical nature, by which copies of pictures are multiplied indefinitely.

119. We propose that the term of copyright in photographs should be 30 years from the date of publication, except when originally published as part of a book. In the latter case it should be for the term of copyright in the book.

120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a painting. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

121. We suggest that the copyright in a photograph should belong to the proprietor of the negative, but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them.

122. The same questions arise with respect to engravings, lithographs, prints, and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that so far as regards the transfer and vesting of the copyright these arts should be placed upon the same basis as photography.

123. Before leaving the subject of the fine arts, we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which

have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold.

124. It may be doubted whether this fear is well founded, but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat or colourably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869.

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Registration of Copyright and Deposit of Copies.

128. In the early part of our Report we referred to the existing law respecting registration. It affords one of the most striking instances of those anomalies and distinctions which have grown up in the law of copyright, because the various subjects of the copyright law have been dealt with by the Legislature at different times, and because there has been no attempt made to bring them into harmony.

* * * *

132. By the present law, registration of books and works included by Act of Parliament in that term, is optional, but no action can be maintained for infringement of copyright until they have been registered. After registration, however, actions will lie for antecedent infringement. The principle of the law, therefore, is, that copyright attaches upon production and publication, and that registration is only a legal preliminary to the enforcement of the right against a wrong doer. The law, as will hereafter be seen, differs in regard to other works; but at present we confine our remarks to books.

133. We do not consider this state of law satisfactory. We find that, as a matter of fact, few books are registered until the copyright has been infringed, and though the words "Entered at Stationers' Hall" are frequently to be seen on the title pages of books, or on the outer sheets of music, entries are not generally made.

134. Several objections have been urged to this state of things. One is, that if it be the object of registration to define the extent and the duration of a right, as well as to ascertain to whom the right belongs, a law which leaves it open to all concerned to avoid that very definiteness which the law seeks to impose, is clearly unsatisfactory. Under the present system it is impossible to ascertain when the term of copyright in a particular book commenced, and therefore to know when it ends. And lastly, it is rendered uncertain whether an author intends to insist upon his copyright at all.

135. The remedies which have been proposed to us are either the total abolition of registration, or that it should be made compulsory, systematic, and efficient.

136. Those persons who suggest the abolition of registration have argued that it is of no practical utility;—that it cannot, as in the case of shares, ships, or land, be conclusive evidence of title;—that it cannot prove that the book registered was written by the person who registers it, or that it is not a piracy;—and that the owner can assert and prove his right quite as well by extrinsic evidence as by means of a register. Those, on the other hand, who advocate registration, say that it is a useful system, because copyright is a species of incorporeal property, of which some visible evidence of existence is desirable;—that it may on occasions be a matter of public utility to know to whom certain books belong, and that by means of registration the public are enabled to ascertain the fact, and whether copyright in a book does exist. They argue further that another advantage which can and ought to be derived from registration is that the register might be made conclusive evidence of transfer or devolution of title;—and that it would afford to the country a complete list of all literary works brought out in this country. It is also said to be very probable that in the absence of registration English authors might find it difficult to enforce their rights in other countries. It is admitted to be a convenience to an author to be able, under an international copyright convention, to produce as evidence a copy of the register, instead of being obliged to prove by witnesses his authorship and right.

137. We are satisfied that registration under the present system is practically useless, if not deceptive. Great annoyance is caused to persons who are obliged to resort to the register, whether for the purpose of registering works or of searching for entries, by the mode in which the register is kept. In stating this we do not desire to express any censure upon the gentleman who holds the office of registrar. Our censure is intended to apply to the system in force, and the law which orders, or at least sanctions it. Moreover, in our opinion the fees are unnecessarily high.

138. We have been satisfied by the arguments in favour of registration that it is advisable to insist upon it, and that it should be made more effective and complete. To this end it should be made compulsory.

139. Before we refer to the several modes by which it has been suggested to us that registration may be made compulsory, it will be convenient to call attention to the system of registration now in force.

140. The existing regulations as to registration at Stationers' Hall are contained in the Copyright Act which was passed in the 5th and 6th years of Your Majesty's reign.* By that Act a book of registry, wherein may be registered the proprietorship in the copyright of books and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copyright, is to be kept at the Hall of the Stationers' Company by an officer appointed by the company for that purpose. The register is to be open at all convenient times for inspection on payment of 1*s.* for every entry searched for or inspected, and certified copies of entries may be obtained on payment of 5*s.*, such copies being made *primâ facie* evidence of certain specified matters in all courts. To make a false entry, or to tender in evidence a fictitious copy, is a misdemeanor. Any proprietor of copyright in a book may enter in the register, in a specified form the title of the book, the time of first publication, the names and places of abode of the publisher and proprietor of the copyright, or of any portion of the copyright: a fee of 5*s.* is payable on registering a book, and on payment of a similar sum any copyright may be assigned by the proprietor by making an entry of the assignment in the register. In case of error in the register, power is vested in Your Majesty's High Court of Justice to order a correction to be made. With regard to the registrar, he, by the terms of the Act, is appointed by the Stationers' Company. There is no power of dismissal given, but possibly the Company have a power of dismissal for reasonable cause. It seems doubtful whether the appointment is for life, or whether it is annual, but renewed as a matter of course; but for all practical purposes the appointment may be regarded as a life appointment. The remuneration of the registrar is by means of the fees payable for entries, certificates, assignments, and searches for entries of copyrights in the register. These fees wholly belong to the registrar, and the Stationers' Company does not participate in them.

141. In the course of our inquiry we received many complaints of a serious character from a number of witnesses against the present system of registration, and the mode in which the register

* Act of 1842, ss. 11–14 and 19.

is managed and the business conducted at Stationers' Hall. Great dissatisfaction has also been expressed at the amount of the fees, but these it will be remembered are fixed by the Act of Parliament. With regard to the complaints relating to the conduct of the registration, we feel bound to say that the registrar (whom we invited to come before us a second time, if he desired to say anything in answer to the charges made by the other witnesses) was able to give satisfactory answers to many of the charges. Among others, complaints were made of the ignorance displayed in the office by the officials there, and their inability to answer questions put to them relating to copyright and registration. These questions, however, in many cases appeared to be of a legal and intricate character, and of such a kind that the registrar and clerks could scarcely be expected to answer them, even if it had been their duty to do so, upon which point we entertain considerable doubt.

142. Complaints were also made of the inconvenience of the Registration Office and the insufficiency of the space. After a careful examination into these points, and a personal inspection of the office by some of Your Majesty's Commissioners, we are satisfied that the building is very inadequate for the purpose of the business conducted there, and that it would become more so upon the introduction of compulsory registration. Nor can there be any doubt that the register itself is capable of considerable improvement.

143. With regard to the insufficiency of the office accommodation, we were informed by the clerk to the Stationers' Company, that should the Legislature continue to entrust to them the duty of registration they would be willing in three or four years' time, when some of their property adjacent to the present office will be pulled down, to erect at their own expense suitable offices on an increased scale and with proper accommodation.

144. It is only fair to the Stationers' Company to point out that they have no power under the Act to make any regulations respecting registration. If, therefore, registration be continued at Stationers' Hall, it would appear to be right that some power of control should be vested in the Company by Parliament, and we believe that they are ready to accept that power.

145. In order to provide an improved system of registration in substitution for that now in use, it appears to us that the two acts of registration and deposit of the copy of a book at or for the British Museum should be combined; or, in other words, that, so far as the author is concerned, registration should be complete on the deposit of the copy and on obtaining an official receipt. One advantage of this would be a diminution of labour and expense, and the British Museum would probably receive all copyright books without the labour of hunting for them in booksellers' catalogues and advertisements, as we are informed the officials are

obliged to do under the present system. Another advantage would be that the fees to be paid for registration might be materially diminished.

146. The registration should be effected by the registrar appointed for that purpose, whose duty it should be to receive the copy of the book, to register the official receipt, and to give a copy thereof, certified by him, to the person depositing the book. This certified copy should be a substitute for the certificate at present obtained, and it should be *primâ facie* evidence in courts of law of the publication and due registration of the work, and of the title to the copyright of the person named therein.

147. A fee of 1*s*. would in our opinion be ample, if registration be made compulsory, to render the office of registration self-supporting. This is shown by the statistics as to the number of books and other publications received at the British Museum, which will be found in the Appendix to the Evidence of Mr. J. Winter Jones. There might also be a fee of 1*s*. for searches. This, besides providing a large revenue, would enable authors to obtain for 1*s*. both registration and a certificate of registration of copyright, for each of which 5*s*. is now charged.

148. We regard it as a mistake that the appointment of an officer for so important a duty as that of registering rights affecting a vast number of persons, and the evidence of which ought to be under the control of the Government, should be vested in a private society. The registers ought to be placed in such keeping that they may at all times be treated as part of the public records, and the registrar ought to be a person amenable to a Government department. The necessity for this would be increased by the acceptance of our suggestion that registration should be made compulsory. In any case the registry and the registrar should be under Government direction and responsible to Government.

149. Considering that a copy of each book has to be deposited at the British Museum,—that at present the authorities of the Museum have to give receipts for the works deposited and to keep certain registers,—and that it is a part of our plan that the deposit of the book and registration of the copyright should be combined,—it appeared to us that the most appropriate place for the Registry Office would be the British Museum, and that the officers of the registry, whilst under the general control of the trustees of the Museum, should be answerable to Government for the proper discharge of their duties. We, therefore, put ourselves into communication with the trustees, with a view of ascertaining their opinion on the point, but they stated that they deemed it undesirable for the British Museum to undertake the duty, on the ground that registration of copyright is an executive function, and did not come within the sphere of their duties as trustees of the British Museum. A copy of the correspondence will be found in the

Appendix and we cannot but express our regret that the trustees declined to accede to our request that one of their body should appear before us. It is probable that a full explanation of our views and a personal discussion might have removed the difficulties which they felt upon this point.

150. If registration of copyright should not be established at the British Museum, it might be either retained at Stationers' Hall, or removed to some Government office established for the purpose. It is proper to state that the Stationers' Company seem desirous of retaining the office, because their Hall has been the place for registration ever since registration was instituted; and further that it has been recognized as the place of registration in several international conventions. In our opinion, however, the reasons in favour of transferring registration to a Government office preponderate. In either case arrangements will have to be made for transferring to the British Museum the works which are deposited and registered elsewhere.

151. It only remains for us to notice the means by which registration may be most easily rendered compulsory. Three ways have been suggested to us in which this may be done:—1. By making registration on the date of publication a condition of an effective copyright. 2. By inflicting a pecuniary penalty. 3. By giving the owner a direct interest in registering his copyright. With reference to the second suggestion, there is at present a pecuniary penalty for failure to present books to the library of the British Museum, and it is urged that it would be found sufficient for the purpose of compelling registration; but to this it is replied that little effect can be expected in such a case as registration of copyright from a mere penalty; and also that a penalty would have to be enforced through the medium of some Government office; and that, independently of the difficulty there would be in finding out books that had not been registered, no Government office would willingly execute the task of suing for penalties. With regard to the presentation of books to the British Museum, the Museum has an interest in procuring the books distinct from the matter of the penalty.

152. With the third suggestion we are inclined to agree; and although we are not disposed to advise the abolition of a penalty for not delivering for the use of the British Museum a copy of every book which has not been delivered and registered at Stationers' Hall, or some Government place of registration, we think that compulsory registration would be sufficiently secured by the third course that has been suggested, namely,—that a copyright owner should not be entitled to take or maintain any proceedings, or to recover any penalty in respect of his copyright until he has registered, and that he should in no case be able to proceed after registration for preceding acts of piracy. This is the present

law in the case of paintings, drawings, and photographs, and we see no reason why the same law should not be applied to copyright in every other work that has to be registered.

153. If this plan should be adopted, it becomes a question what should happen after registration with regard to copies made before registration. Were the copyright owner entitled upon registration to suppress all such copies, the compulsory provisions of the law would to a certain extent be neutralised, because it would be unnecessary for copyright owners to register until their works had been copied. It has been urged, on the other hand, that if an unscrupulous person should, after the expiration of the time allowed for registration, and before registration, publish a large number of copies, the copyright owner would practically lose all the benefit of his copyright if these copies were allowed to be sold and circulated after registration. We think, however, that in practice this would not occur. As a rule, registration would be effected immediately on publication, and before the work could be copied.

154. We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say one month, after publication.

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Forfeiture of Copies.

160. Before proceeding farther we may notice a provision of the law which we consider of great value as a protection for owners of copyright, and which we consider it desirable to retain. By the Act which was passed in the 5th and 6th years of Your Majesty's reign it is provided that all copies of any book in which there is copyright, unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright, are to be deemed to be the property of the registered proprietor of such copyright, and he may sue for and recover the same, with damages for the detention thereof, from any person who detains them after a demand thereof in writing. We recommend that this provision, *mutatis mutandis*, should be extended to works of fine art. We think it would, however, be an improvement to provide that these copies and damages might be summarily recovered by application to a magistrate.

Public Libraries.

161. The subject which we have next to notice is the obligation that now exists to present gratuitously copies of every book

published to certain public libraries. This obligation dates from the reign of his Majesty King Charles II., and since that date it has varied from time to time as regards the number of copies required to be presented and the libraries entitled to them, the number of the latter having at one time been as high as eleven. The Act by which the present obligation was imposed is that which was passed in the 5th and 6th years of Your Majesty's reign. By that Act one copy of every book published, and of every second or subsequent edition, if any alterations or additions are contained therein, has to be delivered gratuitously by the publisher at the British Museum, and if a demand be made in writing one copy has also to be delivered gratuitously for the Bodleian Library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, and the library of Trinity College, Dublin. Thus authors and publishers have now generally to provide five copies of each work, as well as of second and subsequent editions, at their own cost for public use. A slight difference is made between the cases of the copies given to the British Museum and of those given to the other libraries. In the former the copies have to be of the best kind published, and in the latter the copies are to be upon the paper of which the largest number of copies of the book or edition is printed for sale; and in the former the delivery is obligatory in every instance, while in the latter it is only required if a demand be made. As a matter of fact, however, copies of nearly every work of any importance are presented to all five libraries.

162. Many of the witnesses who have given evidence before us have complained of this obligation as a heavy and unjust tax. The weight of it, however, is hardly felt in the case of low-priced books, or books of large circulation, though the gratuitous presentation of a number of books of even small value involves a double loss to authors and publishers, assuming that the libraries would each buy a copy, were one not to be obtained without payment. The grievance is of course most felt in the case of expensive works. Publishers complain of the injustice of taxing them or the authors for the maintenance of public libraries, and ask why the public, or the bodies to be benefited, should not pay for the books they require.

163. When this complaint was made to us we communicated with the authorities at the libraries other than the British Museum, in order to ascertain the number of books obtained by them under the Act, and the value they attached to their privilege. We obtained replies from which it appears that a large number of the books published are sent to these libraries, and that they are generally sent without any demand being made for their delivery; also that the authorities regard the privilege as one of considerable value, which they are not willing to part with. We have placed a copy of this correspondence in the Appendix to the Evidence.

164. Having to decide between the authors and publishers on the one hand, and the libraries on the other, we on the whole consider that the complaint of the authors and publishers is well founded, and we have come to the conclusion that so much of the existing law relative to gratuitous presentation of books to libraries, as requires copies of books to be given to libraries other than that of the British Museum, should be repealed. In making this recommendation we have taken into consideration the facts that the bodies to whom the libraries belong are possessed of considerable means and are well able to purchase any books which they may require; and also that the repeal of the clause giving the privilege, will not deprive the libraries of any property already acquired, but merely of a right to obtain property herein-after to be created.

165. It will have been seen that we do not propose to interfere with the obligation to deliver at the library of the British Museum a copy of every book published, as it is a part of our scheme that registration should be effected and copyright secured by the deposit of a copy of the work for the public use. To this we think no reasonable objection can be made.

166. We will only add that the importance of securing a national collection of every literary work has been recognised in most of the countries where there are copyright laws. And with a view to make the collection in this country more perfect, we are disposed to think that it would be desirable to require the deposit at the British Museum of a copy of every newspaper published in the United Kingdom. As a matter of fact, such newspapers are, we believe, now deposited there, but a doubt has been raised whether that deposit could be enforced under the existing law.

Music and the Drama.—Penalties.

167. We have next to refer to a provision of the law which has of late occasioned some dissatisfaction, and which, in our opinion, needs revision.

168. By an Act of Parliament which was passed in the third year of the reign of His late Majesty King William IV. (c. 15.), it was enacted, with reference to dramatic copyright, that if any person should, during the continuance of the sole liberty of representation and contrary to the right of the author, or his assignee, represent or cause to be represented, without the consent in writing of the proprietor of the copyright first had and obtained, at any place of dramatic entertainment within the British dominions, any dramatic piece, the offender should be liable, for each and every representation, to the payment of an amount not less than 40*s*., or to the full amount of the benefit or advantage arising from the representation, or the injury or loss sustained by the proprietor of the copyright, whichever should be the greater damages; such sum

to be recovered together with double costs of suit by the proprietor. In the 20th section of the Act, which was passed in the 5th and 6th years of Your Majesty's reign (c. 45.), it was recited that it was expedient to extend to musical compositions the benefits of the earlier Act, and it was enacted that the provisions of the earlier Act should apply to musical compositions.

169. This provision for the 40*s*. penalty has lately been much abused. Copyrights in favourite songs from operas and in other works have been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of 2*l*. for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights; and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country, and some will be found in the evidence.

170. We have inquired whether the abolition of the right to take proceedings for the performance of these single songs would inflict injury on composers. The opinion seemed to be that though public performance is generally advantageous to composers, since it operates as an advertisement of their works, it is necessary that copyright owners should retain sufficient control to enable them to save their music from inferior or unsuitable performance, which might give the public an unfavourable opinion of their compositions.

171. The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s*. at present recoverable for any infringement of musical copyright by representation, the court should have power to award compensation according to the damage sustained.*

* These recommendations have been carried out by the Copyright (Musical Compositions) Acts, 1882 and 1888.

172. This abuse of the powers given by the Act does not seem to have arisen in the case of dramatic copyright, nor does it seem likely to arise so long as the present law of licensing places of dramatic performance exists. We do not therefore suggest any alteration in the law so far as it applies to that copyright.

Fine Arts.—Infringement.

173. Two matters relating to infringement of copyright in works of fine art, but particularly of paintings, have been brought to our notice in which, it is alleged, the law affords an inadequate remedy.

174. First, by the 6th section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68.) it was enacted that if any person should infringe copyright in any painting, drawing, or photograph, he should be liable to a penalty of 10*l.*, and all the piratical copies should be forfeited to the proprietor of the copyright. Artists and engravers, who are frequently proprietors of copyright in paintings and drawings, consider the provision enabling them to seize piratical copies to be of great value, but they say that it is rendered inefficient by the fact that no power is given to enter a house and search for copies. An instance was given to us where, a conviction for selling piratical copies having been obtained, the magistrate had made an order that the copies should be delivered up, but it was found that the order could not be enforced.

175. The only remedy suggested to meet the evil, is that proposed in the Bill introduced into Parliament in the year 1869, but withdrawn before it became law, and which runs as follows:—

"Upon proof on the oath of one credible person before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act that there is reasonable cause to suspect that any person has in his possession, or in any house, shop, or other place for sale, hire, distribution or public exhibition any copy, repetition or imitation of any work of fine art, in which or in the design whereof there shall be subsisting and registered copyright under the Act, and that such copy, repetition, or imitation has been made without the consent in writing of the registered proprietor of such copyright, it shall be lawful for such justice, court, sheriff, or other person as aforesaid before whom any such proceeding is taken, and he or they is and are hereby required to grant his or their warrant to search in the daytime such house, shop, or other place, and if any such copy, repetition, or imitation, or any work which may be reasonably suspected to be such shall be found therein, to cause the same to be brought before him or them, or before some other justice of the peace, court, sheriff, or person as aforesaid, and upon proof that any or every such copy, repetition, or imitation was unlawfully made, the same shall there-

upon be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property." Though we should be glad to see some remedy adopted, we entertain doubts whether that proposed is not of a more stringent character than the circumstances justify.

176. The other matter relative to copyright in the fine arts, with regard to which it is said the law is defective, arises out of the now very common practice of hawking about the country piratical copies, and particularly piratical photographs of copyright paintings and engravings. This is spoken of as a serious injury to the copyright proprietors, and a practice which the existing law is powerless to stop.

177. At present all penalties and all copies forfeited can be recovered in England and Ireland only by action or by summary proceedings before justices, that is by summoning the offending person before the justices, and in Scotland by action before the Court of Session, or by summary action before the sheriff. The complaint made to us is that there is no power to seize piratical copies where they are seen and when they might be taken. The power to proceed by summons is, it is said, generally ineffectual, because persons selling these copies go round from house to house and refuse to give either a name or address, and are altogether lost sight of before a summons can be procured.

178. A remedy by seizure was proposed in the Bill of 1869, and we think that the evil can best be met by the introduction in any future Act of a clause similar to the 15th of that Bill. The 15th clause was as follows:—

"If any person elsewhere than at his own house, shop, or place of business, shall hawk, carry about, offer, utter, distribute, or sell, or keep for sale, hire, or distribution, any unlawful copy, repetition, or colourable imitation of any work of fine art, in which, or in the design whereof, there shall be subsisting and registered copyright under this Act, all such unlawful articles may be seized without warrant by any peace officer, or the proprietor of the copyright, or any person authorised by him, and forthwith taken before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act, and upon proof that such copies, repetitions, or imitations were unlawfully made, they shall be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property."

We think, however, that the words "carry about" might be properly omitted, as the other words are sufficiently large; and further, that it should not be in the power of the proprietor of the copyright, or any person authorised by him, to seize, but that the clause should run: "without warrant by any peace officer under "the orders and responsibility of the proprietor of the copyright or "of any person authorised," &c., or to that effect.

179. Besides providing penalties for various acts of infringement of copyright, and for fraudulently marking pictures with the names or marks of artists who are not the authors of them, which penalties we think are sufficient for the purpose, the present law prohibits the importation into the United Kingdom, except with the consent of the proprietor, of all repetitions, copies, or imitations of paintings, drawings, or photographs in which there is copyright, which have been made in any foreign state or in any other part of the British dominions than the United Kingdom. We think it is desirable to retain this prohibition, and that a somewhat similar prohibition might properly be extended to the exportation of unlawful repetitions, copies, and imitations.

180. Whatever powers may be given to search for and seize piratical copies of paintings, and whatever penalties may be established, the same should be extended to sculpture and other works of fine art.

Piracy of Lectures.

181. We have already suggested some alterations in the law with respect to lectures. In case of piracy either by publication or re-delivery without the author's consent, we think there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication or re-delivery. If the piracy is committed by printed publication, we think the author should also have power to seize copies.

COLONIAL COPYRIGHT.

182. We have already* shown that in some important respects the state of the present copyright law, as regards the colonies, is anomalous and unsatisfactory, and we have suggested that a remedy may be found by providing that publication in any part of Your Majesty's dominions shall secure copyright throughout those dominions. It is unnecessary to recapitulate our reasons for making this suggestion, and we will only add that the difficulties which may arise in arranging the details of this change in the law, will not, we anticipate, be of a serious character.

183. There remain, however, other questions of some difficulty affecting the general body of readers in the colonies, with which we now proceed to deal.

184. It must be admitted that it is highly desirable that the literature of this country should be placed within easy reach of the colonies, and that with this view the Imperial Act should be modified, so as to meet the requirements of colonial readers.

* *Ante*, paragraphs 49–58.

185. In this country the disadvantage arising from the custom of publishing books in the first instance at a high price, is greatly lessened by the facilities afforded by means of clubs, book societies, and circulating libraries.

186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the colonies, and until the cheaper English editions have been published, the colonial reader can only obtain English copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed, and from the North American provinces urgent representations were made in favour of admitting into those provinces the cheap United States reprints of English works.* In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the Home Government, "as tending to "show the injurious effects produced upon our more distant "colonists by the operation of the Imperial law of copyright." And in 1847 an Act was passed "To amend the law relating to "the protection in the colonies of works entitled to copyright in "the United Kingdom." †

188. *Foreign Reprints Act.*—The principle of this Act, commonly known as the Foreign Reprints Act, is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interests of British authors.

189. It is provided, "that in case the legislature or proper "legislative authorities in any British possession, shall be dis-"posed to make due provision for securing or protecting the "rights of British authors in such possession, and shall pass an "Act or make an ordinance for that purpose, and shall transmit "the same in the proper manner to the Secretary of State, in "order that it may be submitted to Her Majesty, and in case "Her Majesty shall be of opinion that such Act or ordinance is "sufficient for the purpose of securing to British authors reason-"able protection within such possession, it shall be lawful for "Her Majesty, if she think fit so to do, to express Her royal "approval of such Act or ordinance, and thereupon to issue an "Order in Council, declaring that so long as the provisions of "such Act or ordinance continue in force within such colony, the "prohibitions contained in the aforesaid Acts (*i.e.* the Copyright

* See Parl. Paper, Colonial Copyright (29 July 1872).
† 10 & 11 Vict. c. 95.

" Act of 1842, and a certain Customs Act), and herein-before " recited, and any prohibitions contained in the said Acts, or in " any other Acts, against the importing, selling, letting out to " hire, exposing for sale or hire, or possessing foreign reprints " of books first composed, written, printed, or published in the " United Kingdom, and entitled to copyright therein shall be " suspended so far as regards such colony."

190. Although the Act is general in its terms, the British possessions in North America were specially in view when it was passed, and for the following reason:—Between this country and the United States there was no existing copyright treaty, and it was the practice of the United States publishers to reprint in their own country English works at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting the importation, were largely introduced into Your Majesty's North American possessions.

191. Certain colonies, among others Canada, made what was at the time accepted by Your Majesty in Council as sufficient provision for securing the rights of British authors, and thus brought themselves under the Act.

192. The provision made by the Canadian legislature was, that American reprints of English copyright works might be imported into the colony on payment of a customs duty of 12½ per cent., which was to be collected by the Canadian Government and paid to the British Government for the benefit of the authors interested. Like provisions were made in other colonies.

193. *Failure of Foreign Reprints Act.*—So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the 10 years ending in 1876, the amount received from the whole of the 19 colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

194. These very unsatisfactory results of the Foreign Reprints Act, and the knowledge that the works of British authors, in which there was copyright not only in the United Kingdom but also in the colonies, were openly reprinted in the United States, and imported into Canada without payment of duty, led to complaints from British authors and publishers; and strong efforts were made to obtain the repeal of the Act.

195. A counter-complaint was advanced by the Canadians. They contended that although they might import and sell American reprints on paying the duty, they were not allowed to re-publish British works, and to have the advantage of the trade, the sole benefit of which was, in effect, secured for the Americans. In defence of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other local causes, and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

196. The Canadians proposed that they should be allowed to re-publish the books themselves under licenses from the Governor-General, and that the publishers so licensed should pay an excise duty of 12½ per cent. for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the customs. Objections, however, were made to the proposal, and it was not carried out.

197. These considerations led to the suggestion that re-publication should be allowed in Canada under the authors' sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions, which would be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies.

198. Matters were in this state when "The Copyright Act of 1875," was passed by the Dominion legislature. The Act was sent over in the form of a Bill reserved for Your Majesty's assent; but as doubts were entertained whether the Act was not repugnant to Imperial legislation, and to the Order in Council made in 1868, by which the prohibitions against importing foreign reprints into the Dominion of Canada had been suspended, power was given to Your Majesty by an Imperial Act passed in 1875 to assent to the Canadian Bill, and thus make it law. Your Majesty's assent was subsequently given.

199. It is in this Imperial Act that a clause will be found, which has been strongly objected to by Mr. Farrer in his evidence before us, prohibiting the importation into the United Kingdom of Canadian reprints.

200. The Canadian Act gave to any person domiciled in Canada, or in any part of the British possessions, or being a citizen of any country having an international copyright treaty with the United Kingdom, being the author of any literary or artistic work, power to obtain copyright in Canada for 28 years, by printing, and pub-

lishing, or re-printing, or re-publishing, or, in the case of works of art, by producing or re-producing his work in Canada, and fulfilling certain specified conditions. The copyright thus capable of being secured by British copyright owners is in addition to and concurrent with the copyright they have throughout the British dominions under the Imperial Act.

201. The Dominion Act has been in force for so short a time that it is difficult to ascertain its full effect; but from a return obtained from Canada by the Secretary of State for the Colonies in November 1876, it appears that 31 works of British authors had been published in Canada under the Act up to that date. A comparison of the prices of these works shows that if the English editions were sold in Canada at any price over about half a dollar, or 2*s*., there was a reduction more or less considerable in the price of the Canadian edition, the reduction in one instance being as great as from $12 60 or 2*l*. 11*s*. 8½*d*. to $1 50 or 6*s*. 1¾*d*. It also appears that of many of the books re-published in Canada under the Act the American reprints were, as a rule, kept out of the Dominion; and that the prices of American reprints sold in the Dominion were higher than those of the Canadian reprints.

202. We have thought it desirable to give this brief sketch of the law of colonial copyright, as it enables us to explain more clearly the questions we have had to consider. The remedies we propose are intended to meet the grievance put forward by the colonial readers.

203. The main grievance, as we have already pointed out, lies in the difficulty experienced by the colonists in procuring, at a sufficiently cheap price, a supply of English copyright books.

204. The Canadian Copyright Act of 1875 may have the effect in time of securing cheap editions of British works in the Dominion. But, in the first place, it is too soon to judge of this, and no similar Act has, as yet, been passed in other colonies; and in the second place, it is questionable whether such an Act would work at all in small colonies.

205. We may at once state that we do not propose to interfere with the Canadian Copyright Act, 1875, or with the principle of that law.

206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st. By the introduction of a licensing system in the colonies: and, 2nd. By continuing, though with alterations, the provisions of the Foreign Reprints Act.

207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. We recommend that in

case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by re-publication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon an application, be granted to re-publish the work in the colony, subject to a royalty in favour of the copyright owner of not less than a specified sum per cent. on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the Imperial Legislature. We should prefer to leave the settlement of such details to special legislation in each colony.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers over which the late Earl Stanhope presided, the following resolution was passed: "That a representation "be made to the Right Honourable the First Lord of the Treasury, "pointing out the great hardship sustained by British authors and "publishers from the operation of the Imperial Copyright Act of "1847, and stating the earnest desire they feel that Her Majesty's "Government may deem it right to propose its prompt repeal."

210. We are fully sensible of the weight that must attach to the opinion of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of Your Majesty's colonies—and upon this point we would refer to the answers returned by the colonies to Lord Kimberley's Circular Despatch of the 29th July 1873—we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in Your Majesty, of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors.

211. We believe that although the system of re-publication under a license may be well adapted to some of the larger colonies, which have printing and publishing firms of their own, and which could reprint and re-publish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright, whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to Your Majesty to repeal the existing Orders in Council; and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it would be desirable to grant a certain period to the colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that Your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to Your Majesty in Council to revoke at any time, any future Order in Council, should the provisions of the colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this Commission to suggest what provisions Your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected, by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some penalty might not also be affixed to the dealing with unstamped copies.

216. And having regard to the power which we have contemplated, for authors to obtain colonial copyright by re-publication in the colonies, and to the licensing system which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or,
3. After there has been a re-publication under the licensing system.

217. A subject of great moment with reference to colonial copyright, is the propriety of permitting the introduction of colonial reprints into the United Kingdom. This question has given rise to much discussion, as may be seen by reference to the correspondence, which, at the time The Canada Copyright Act, 1875,* was under consideration, passed between the Colonial Office and the Board of Trade. Ultimately the 4th section of that Act was passed by which it is enacted, that, where any British copyright work has acquired copyright in Canada under the colonial Act by re-publication, it is unlawful for any person other than the owner to import Canadian reprints into the United Kingdom. This provision is analogous to that in force in the case of books reprinted in foreign countries.

218. We have been urged to recommend the repeal of that section, so far at all events as to admit the importation into the United Kingdom of copies published with the consent of the copyright owner.

219. We may state generally that authors and publishers, who are the persons most interested in copyrights, are strongly opposed to the introduction of colonial reprints into the United Kingdom, on the following grounds:—That the cheaper price of those reprints would cause great pecuniary loss to the owners of copyrights:—that the present system of trade, which has been found most remunerative to authors and publishers, would be disarranged:—and that publishers would not be willing or able to offer so much to authors for their works.

220. It is argued that, if importation is allowed, no copyright owner will consent to re-publication in the colonies by himself or others, because all such re-publications, being made with his consent, would be liable to be introduced here, and that the colonial readers would therefore suffer to a certain extent by the alteration in the law. This last argument will, however, lose its force, if effect is given to our suggestion of permitting re-publication in the colonies under a licensing system.

221. The arguments in favour of admission of colonial reprints are based on consideration of the public interest, which is alleged to be greatly injured by the high prices at which books are now published — prices that are altogether prohibitory to the great mass of the reading public; and it is said that if the cheaper colonial editions were to be allowed in this country, the necessary effect would be that prices generally would be greatly reduced.

* 38 & 39 Vict. c. 53. The Canadian Act, which is scheduled to this Act, was the cause of the appointment of the Royal Commission, inasmuch as it was thought to clash with the Act of 1842.—*Scrutton on Copyright*, 2nd ed., p. 48.

222. It is also urged that if the law gives British copyright owners the benefit of copyright throughout the empire, and the exclusive command of the colonial market, it is unfair to the British public that they should be deprived of the advantage they might derive from that extended copyright, and that they should be the only section of Your Majesty's subjects who are debarred from participating in the advantages of cheap colonial editions.

223. It is also said that it is a mistake to suppose that authors would really be injured by the introduction into the United Kingdom of the colonial editions, for that the profit which would be derived from the extended market would more than compensate for the loss resulting from publication at lower prices. Thus the public would derive the benefit of cheap literature, while authors would reap profit equal to or greater than that they now enjoy.

224. The witness who principally advocated the introduction of these reprints was Mr. Farrer, the Permanent Secretary to the Board of Trade,* which is the department specially charged with legislation affecting copyright. Having regard to the great attention he has devoted to the subject and to his official position, we desire to state that we think his opinions are entitled to much consideration. The arguments adduced by him will be found fully stated in his evidence.

225. We have carefully weighed this evidence with the views of other persons who are opposed to the introduction of colonial reprints into the United Kingdom; and on the whole we think that the admission of such reprints would probably operate injuriously towards British authors and publishers, and that it is doubtful if it would be attended in many cases with the result anticipated by Mr. Farrer, that is to say, the cheapening of books for home consumption. We think the almost certain result would be, that it would operate as a preventive to re-publication in the colonies by authors themselves, so that, if no publisher republished under the licensing system, the colonial reader would be in no better condition than he is now.

226. We therefore think that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners; and, conversely, that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into such colony without the consent of the copyright owners.

227. It will have been observed that in suggesting the above alterations in the existing law of copyright, we have not proposed

* Mr. Farrer, now Sir Thomas Farrer, has since retired from the Board of Trade.

to interfere with the existing powers of colonial legislatures to deal with this subject. An author who first publishes in a colony should only be entitled to secure copyright throughout the British dominions, if he complies with the requirements of the copyright law for the time being of that colony. It will rest, therefore, with each colonial legislature to determine the nature of those requirements, such as registration, deposit of copy, and so forth; and we cannot doubt that they will be alive to the expediency of adopting for the colony, so far as it is practicable, the principal provisions of the Imperial Act, which, if effect be given to our suggestions, will, as to all such matters of detail, be hereafter limited to the United Kingdom. By this means uniformity of practice will be secured throughout Your Majesty's dominions, and certain difficulties will be avoided, which might arise if, for example, registration were in some colonies compulsory, and in others voluntary.

228. But important as uniformity is in matters of detail, it becomes still more important in respect of the term to be fixed for the duration of copyright. As the law now stands, we apprehend that each colony has a right to decide what shall be the term during which an author who publishes in the colony shall have copyright therein. The exercise of this power does not, it is true, override the provisions of the Imperial Act, which gives copyright in such colony to a work first published in the United Kingdom, but the existence of this double term is inconvenient. If, as we recommend, publication in any colony shall for the future secure copyright throughout all Your Majesty's dominions, in the same way and for the same term as if the work had been first published in this country, the necessity for fixing a term for duration of a copyright in a colony will practically cease. In truth the difference between colonial and imperial copyright will disappear, as colonial copyright will merge into imperial copyright; and we may fairly assume that where, as in Canada and at the Cape, a term has been fixed for copyright in the colony different from that fixed by the Imperial Act, the colonial legislature will be ready to repeal *pro tanto* the colonial law, and to confine legislation to matters of detail.

229. Should, however, our anticipations on this point be incorrect, it will become a question whether, with a view to secure uniformity, the concession to any colony might not be made conditional upon the adoption by the legislature of such colony of the same term as that fixed for the time being by the Imperial Act.

230. In concluding our remarks upon this part of the subject, we recommend that the production of a copy of the colonial register (if any), certified by some duly authorised officer in that behalf, shall be *primâ facie* evidence in Your Majesty's Courts of compliance with the requirements of the local law, and of the title to copyright of the person named therein. A provision to this

effect would have to be made by the different colonial legislatures for the guidance of colonial courts.

231. It has been suggested to us that some re-registration, or notice of the original registration, should be made in England of a work published in a colony, and that a copy of every work published in the colonies should be deposited at the British Museum, within a certain time after publication. Upon the whole we are not disposed to recommend the adoption of either of these suggestions. Publication in a colony will give copyright throughout the British dominions, and if re-registration of the work is desirable in England, it is equally so in all the other British possessions in which the work obtains copyright. But to require such a general re-registration would throw a considerable burden upon the owners of colonial copyright, and it appears to us not unreasonable to call upon a person who desires to reprint a work which has already been published to take the necessary steps to ascertain whether the work has been duly published and, if necessary, registered in the place of publication, and whether the term of copyright has expired. Should, however, a notice of registration be thought desirable, we suggest that it should be officially given by the registering department in the United Kingdom or colony; and the fee for original registration might be made to cover the expenses of giving such notice.

232. As regards the second suggestion, we are of opinion that the Trustees of the British Museum may fairly be expected to purchase such colonial works as they want, considering that the author or owner of the copyright will doubtless be required by local law to deposit a copy in the place of publication. Indeed it was stated to us by officers of the British Museum that many such works are now purchased.

INTERNATIONAL COPYRIGHT.

The American Question.

233. As to continental nations, few questions have, in the course of our inquiry, been raised with regard to the general regulations of international copyright; but we find it to be impossible to exclude from examination the present condition of the copyright question between Great Britain and the United States. There is no international protection of copyright as between ourselves and the Americans, although, owing to causes to be presently referred to, the United States is of all nations the one in which British authors are most concerned,—the nation in regard to which the absence of a copyright convention gives rise to the greatest hardships.

234. When deciding upon the terms in which we should report upon this subject, we have felt the extreme delicacy of our position in expressing an opinion upon the policy and laws of a friendly nation, with regard to which a keen sense of injury is entertained by British authors. Nevertheless, we have deemed it our duty to state the facts brought to our knowledge, and frankly to draw the conclusions to which they lead.

235. Although with most of the nations of the continent treaties have been made, whereby reciprocal protection has been secured for the authors of those countries and Your Majesty's subjects, it has hitherto been found impracticable to arrange any terms with the American people. We proceed to indicate what in our view are the difficulties which have impeded a settlement.

236. The main difficulty undoubtedly arises from the fact that, although the language of the two countries is identical, the original works published in America are, as yet, less numerous than those published in Great Britain. This naturally affords a temptation to the Americans to take advantage of the works of the older country, and at the same time tends to diminish the inducement to publish original works. It is the opinion of some of those who gave evidence on this subject, and it appears to be plain, that the effect of the existing state of things is to check the growth of American literature, since it is impossible for American authors to contend at a profit with a constant supply of works, the use of which costs the American publisher little or nothing.

237. Were there in American law no recognition of the rights of authors, no copyright legislation, the position of the United States would be logical. But they have copyright laws; they afford protection to citizen or resident authors, while they exclude all others from the benefit of that protection. The position of the American people in this respect is the more striking, from the circumstance that, with regard to the analogous right of patents for inventions, they have entered into a treaty with this country for the reciprocal protection of inventors.

238. Great Britain is the nation which naturally suffers the most from this policy. The works of her authors and artists may be and generally are taken without leave by American publishers, sometimes mutilated, issued at cheap rates to a population of forty millions, perhaps the most active readers in the world, and not seldom in forms objectionable to the feelings of the original author or artist.

239. Incidentally, moreover, the injury is intensified. The circulation of such reprints is not confined to the United States. They are exported to British Colonies, and particularly to Canada, in all of which the authors are theoretically protected by the Imperial law. The attempts which were made, by legalising the

introduction of these reprints into Canada, to secure a fair remuneration to British copyright owners have, as we have shown, completely failed.

240. This system of reproduction is not confined to books, but extends to music and the drama, and we have been told that it is not an uncommon thing when a new play by an author of eminence is produced in London, for shorthand-writers to attend and take down the words of the play for transmission to the United States.

241. But though there is no law in the United States to protect a foreign work from re-publication by any number of publishers, the natural result of general publication and rivalry was to make the competition which arose disastrous to those engaged in it. Firms of eminence and respectability rivalled each other in the efforts of their agents in England to secure early sheets of important works, but when the sheets were obtained, and an edition issued at a moderate price, some other firm would undertake to supply the public with the same article at a lesser rate. American publishers were thus obliged to take steps for their own protection. This was effected by an arrangement among themselves. The terms of this understanding are, that the trade generally will recognise the priority of right to re-publication of a British work as existing in the American publisher who can secure priority of issue in the United States. This priority may be secured either by an arrangement with the author, or in any other way. The understanding, however, is not legally binding, and is rather a result of convenience and of a growing disposition to recognise the claims of British authors, than of actual agreement.

242. The effect of this trade understanding has no doubt been profitable to a certain number of British copyright owners, since, now that American publishers are practically secured from competition at home, it is worth while for them to rival each other abroad in their offers for early sheets of important works. We are assured that there are cases in which authors reap substantial results from these arrangements, and instances are even known in which an English author's returns from the United States exceed the profits of his British sale, but in the case of a successful book by a new author it would appear that this understanding affords no protection. Even in the case of eminent men, we have no reason to believe that the arrangements possible under the existing conditions are at all equivalent to the returns which they would secure under a copyright convention between Your Majesty and the United States.

243. We may remark in this place that as authors of books in some cases obtain payment for early sheets from American publishers, so also dramatic authors of note sometimes obtain remuneration for the right to perform their plays. There appears,

however, to be a difference in the law relating to books and plays in the United States; for although the English author of a book can give no copyright to an American publisher, yet it is stated that the author of an English play can give an American theatrical manager a right of representation, if the play has not been published anywhere as a book, and for this purpose a distinction is made between such publication and public performance.

244. It is, without doubt, a general opinion that a copyright convention with the United States is most desirable. We have, therefore, endeavoured during our inquiry to ascertain the feeling of Americans on the subject, and wherein, if at all, their interests would be prejudiced. We have also endeavoured to find out what practical difficulty there is in the way of such a convention, and if by any means such difficulty can be surmounted.

245. It may be stated that American authors have not the same need of a convention as those of Great Britain, since our law affords copyright protection throughout the British dominions to foreigners as well as to Your Majesty's subjects, provided they publish their books in the United Kingdom before bringing them out elsewhere, while the American law, unlike ours, does not make first publication at home a condition for obtaining copyright. It is consequently the practice of some American authors to publish their books first in England, and so to obtain British copyright, and then to re-publish them in the United States and obtain American copyright, or to publish in the two countries almost simultaneously.

246. We have it in evidence from Mr. Putnam, a member of a large American publishing firm, that American authors are unanimous as to the advantage of international copyright between the United States and this country. We have also been told by another American witness that as publishers can bring out reprints of English books without paying the authors, it is so much more to their interest to do so than to pay American authors, that they frequently refuse to publish American works unless at a low rate of payment. Hence it appears that, in the opinion of many Americans, international copyright is desirable for American authors.

247. This question has been before the United States legislature on more than one occasion, and the Senate has twice agreed in a recommendation made to them by the Government on the subject.

248. We are therefore satisfied that, though there are other obstacles, the most active opposition in the United States arises from the publishing and printing interests. It is feared that if there were international copyright, British authors would be able to select their own mode of manufacturing their books, and to choose their own publishers, and that they would in many cases

have their books printed in this country, and perhaps prepared for sale, so as to avoid the expense of producing them in America. Moreover, the American publisher fears the competition of the English publisher, because at the present time books cannot be as cheaply manufactured in the United States as in Great Britain; and, but for the protective tariff, there would no doubt be a great inducement to British publishers to compete with those of America in the large and important market of the United States.

249. *Transatlantic Printing.*—These fears have been indeed urged with a discouraging effect upon the negotiations and proposals for international copyright, and have induced the Americans to claim that the privilege of copyright in the United States should only be granted on condition that the book is wholly re-manufactured and re-published in America. On the other hand the British copyright owner feels that such conditions would lead, in many cases, to a useless outlay for the re-manufacture of stereotype plates and the reproduction of illustrations, practically at his expense and to his loss, because this outlay would have to be taken into account by the publisher in considering the sum he could afford to pay for authorship. While the English author desires not to be restricted in the selection of a publisher, he apparently does not care much whether the publisher be an American or an Englishman.

250. Although it has hitherto been the practice, we believe, of Your Majesty's Government to make international copyright treaties only with countries which are willing to give British subjects the full advantage of their domestic copyright laws, untrammelled by commercial restrictions, in exchange for the protection afforded to their subjects by our own copyright laws, yet we think it not unreasonable for the American people to wish to ensure the publication of editions suited to their large and peculiar market, if they enter into a copyright treaty with this country. On the whole, therefore, we are of opinion that an arrangement by which British copyright owners could acquire United States copyright by re-printing and re-publishing their books in America, but without being put under the condition of reproducing the illustrations or re-manufacturing the stereotype plates there, would not be unsatisfactory to Your Majesty's subjects, and that it would be looked upon more favourably in the United States than any other plan now before us.

251. *Deprecation of Retaliatory Measures.*—It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that,

on the highest public grounds of policy and expediency, it is advisable that our law should be based on correct principles, irrespectively of the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is one of universal application. We therefore recommend that this country should pursue the policy of recognising the author's rights, irrespective of nationality.

252. Before leaving this subject we ought to notice a suggestion that was made to us by Mr. Edward Dicey, one of the witnesses who gave evidence before us. He thought that it might be possible for a mixed commission to arrange terms for a copyright convention, which would be mutually acceptable. Looking to the great importance of securing an international convention with the United States, we venture to express our opinion that the appointment of such a mixed commission to examine into and report upon the whole subject might be attended with advantage.

* * * *

294. In concluding our labours we beg leave to express our hope that we have duly considered and made our Report upon all the matters intended to be referred to us by your Majesty's Commission. We are conscious that there may be points of detail upon which we have not touched, but these, if noticed by us, would have lengthened our Report, without, as we think, affording any substantial assistance to those upon whom the duty of legislating may hereafter devolve.

All which is humbly submitted to Your Majesty's gracious consideration.

Dated the 24th day of May 1878.

JOHN MANNERS. (L.S.)
Subject to my Dissent from a part of paragraph 150.*

DEVON. (L.S.)

CHARLES LAWRENCE YOUNG. (L.S.)
Subject to my Note appended hereto.†

H. T. HOLLAND. (L.S.)

JOHN ROSE. (L.S.)
Subject to Dissent and Separate Report.‡

* Lord John Manners, Sir H. D. Wolff, and Mr. W. Smith were of opinion that registration might continue to be done at Stationers' Hall.

† Relating to term of copyright, dramatisation of novels, and newspaper copyright.

‡ The dissent was from pars. 225 and 226 of Report, and the separate report gives reasons for this dissent.

H. DRUMMOND WOLFF. (L.S.)
Subject to my Separate Report * and Dissent from part of paragraph 150.†

J. F. STEPHEN. (L.S.)
Subject to a Note appended hereto.‡

JULIUS BENEDICT. (L.S.)

F. HERSCHELL. (L.S.)

EDWARD JENKINS. (L.S.)
Subject to my Separate Report.§

WM. SMITH. (L.S.)
Subject to my Dissent from a part of paragraph 150.†

J. A. FROUDE. (L.S.)

ANTHONY TROLLOPE. (L.S.)
Subject to my Note of Dissent as to paragraphs 153 and 154.‖

FREDERICK RICHARD DALDY. (L.S.)
Subject to my Note of Dissent as to paragraphs 147 and 154.¶

* The separate report relates to colonial and international copyright.

† See note *, p. 70.

‡ In the note the writer dissents from the recommendations as to abridgments (par. 15), and as to restriction of dramatisation of novels (par. 17), and disapproves of copyright in pictures or statues.

§ As to registration, term of home copyright, and international copyright.

‖ As to compulsory registration.

¶ As to charge for original registration (par. 147) and delivery of copies at British Museum (par. 154), Mr. Daldy dissented from the recommendation that non-delivery of a copy at the British Museum should affect the copyright of a book. "The principle," he said, "seems unsound and unequal; besides, it would generally fall on the author, although the default was made by the publisher."

[*For extracts from Sir Louis Mallet's dissentient Report, see next page.*]

Extracts from the Separate Report by Sir Louis Mallet, C.B.

1. It is with much regret that I find myself compelled to dissent from some of the most important recommendations of the foregoing Report, and to submit the conclusions at which I have arrived, after a careful consideration of the questions referred to this Commission, and of the evidence which it has taken, for I am conscious that my personal opinions, unsupported by those of my colleagues, can carry little weight.

2. I should have been content, if I had been able to concur generally in the practical conclusions of the Commission, to avoid all reference to the abstract principles upon which the law of copyright ultimately rests; but I feel that it is impossible adequately to explain and justify the course which I have taken in dissenting from those conclusions, without adverting to the reasons which have obliged me to adopt it.

3. I do not consider that a copyright law, or, in other words, a law which enables a copyright owner to prevent other persons from copying published works, rests upon the same grounds of public expediency as those which justify the recognition by law of proprietary rights generally. Nor does it appear that in modern times it has been ever so regarded by the legislation of the countries where it exists.

4. The right conferred by a copyright law derives its chief value from the discovery of the art of printing; and there appears no reason for giving to authors any larger share in the value of a mechanical invention, to which they have contributed nothing, than to any other member of the community. It is not even claimed that an author should have a right of property in ideas, or in facts or in opinions. It is impossible ever to ascertain or to define how far these are the product of his own thought or of his own labour. It is merely the form in which they are presented for which this claim is advanced, and for this all that is in principle required appears to me to be that he should be protected in any contract which he desires to make once for all in the original publication of his work.

5. Some of the witnesses whose evidence has been received by Your Majesty's Commission have urged the claim of authors to perpetual copyright, on the ground that the right of an author to property in his published works is as complete and extends as far as the right of any person to any property whatever.

6. If this analogy were admitted, it appears to me that it would be difficult to dispute the claim of an author to perpetual copyright;

but I venture to submit that the claim of an author to a right of property in his published works rests upon a radical economic fallacy, viz., a misconception of the nature of the law of value.

7. The necessity which is recognised in all civilised socities of conferring rights of private or personal property, arises from the limited supply of that for which there is an unlimited demand. It is only from a limitation of supply that there can be any value in exchange.

8. But supply may be limited either by natural or by artificial causes.

9. Wherever supply is limited by natural causes it is necessary in the public interest to limit the demand, by investing the possessor of the subject of it with proprietary rights, for without them the progressive increase of an unlimited demand operating on a limited supply would lead to a dissolution of society. To whatever extent these rights partake, as they often must, of the character of a monopoly, they do so in virtue of attributes derived from the nature of things, which may be regretted, but must be accepted as inevitable, and which the law is therefore compelled to recognise.

10. There is no such necessity in the case of those objects which are useful or necessary for mankind of which the supply is unlimited. In that which is absolutely unlimited, in the air, in sunlight, in the forces of nature, such as heat, electricity, magnetism, &c., there is no natural exchangeable value, and therefore no property; in that which, although not absolutely unlimited in itself, nevertheless exceeds all probable or possible demands in exchange, there can be little or no value, and little or no property, *e.g.*, in the sea, in the water of large or unfrequented streams, in the game of a wild country, or in the fish of the sea. It is in fact scarcity which creates value, and renders property necessary. Property exists in order to provide against the evils of natural scarcity. A limitation of supply by artificial causes, creates scarcity in order to create property. To limit that which is in its nature unlimited, and thereby to confer an exchangeable value on that which, without such interference, would be the gratuitous possession of mankind, is to create an artificial monopoly which has no warrant in the nature of things, which serves to produce scarcity where there ought to be abundance, and to confine to the few gifts which were intended for all.

11. It is within this latter class that copyright in published works must be included. Copies of such works may be multiplied indefinitely, subject to the cost of paper and of printing which alone, but for copyright, would limit the supply, and any demand, however great, would be attended not only by no conceivable injury to society, but on the contrary, in the case of useful works, by the greatest possible advantage.

12. The case of a book is precisely analogous to that of a house, of a carriage, or of a piece of cloth, for the design of which a claim to perpetual copyright has never, I believe, been seriously entertained.

As is stated by Mr. Farrer, the Secretary to the Board of Trade, in a paper of remarks on the evidence of some of the witnesses, which was circulated for the information of the Commission,—

"Professor Huxley, and I think Mr. Spencer and Professor Tyndall agree with him, states in the strongest and clearest terms his view that the foundation of copyright law is the absolute right of the author once and for ever to the form in which he has uttered his thoughts, and he ingeniously suggests that this law is merely a convenient substitute for a sale by the author of each copy, with a condition attached that the purchaser shall not copy. It is needless to say that this suggestion is as fictitious as it is ingenious. A chattel going about the world with an implied covenant by every one, who with or without consideration gets possession of it, that he will not imitate it, would certainly be a legal novelty. The real history and fact of copyright law are very different. As to the absolute and perpetual right, not only has it never been recognised as a matter of fact, but analogies are against it. Words, thoughts, and actions when uttered or done, pass, as a general rule, into the common domain, and it is thus that human life is carried on. In those productions of the human mind which are most essentially original, and which are at the same time the most useful to mankind, in such things as the moral doctrine of the Sermon on the Mount, the intellectual theory of gravitation, of evolution, or of the conservation of energy, there is and can be no exclusive right. Nor, again, is there, as a matter of practice, any exclusive right in more ephemeral matters, *e.g.*, in the news, information, or articles of a newspaper, or in a political speech. It is only when put into the particular form of a book, or a lecture, or a picture, that an exclusive right over the productions of the human mind has been recognised, and that with certain limitations and for a certain specified purpose."*

13. The policy, then, of copyright laws must be sought in another order of ideas, and be made to rest on some other ground than that which is the foundation of rights of property in whatever is subject to a natural limitation of supply.

14. I suppose that the presumption of a copyright law is that it is only by conferring a monopoly for a term of years on an author that sufficient inducement can be afforded to literary effort, and that without such form of protection the literature of a country would suffer, either from a diminished supply or a deterioration in quality.

15. From this point of view the question becomes a purely practical one, viz., whether any special interference by law is required to ensure for a community the best possible literature at the cheapest possible price.

* [Footnote by Mr. Farrer to the above paragraph.] "It is to such views as the above concerning the absolute and indefensible rights of authors and artists that we may trace some of the proposals which have been actually made to this Commission, *e.g.*, the proposal that an architect who has given a design for a house or a cottage shall have the power to prevent anybody from ever

16. The general prevalence of copyright laws in civilised countries appears, no doubt, to afford *primâ facie* evidence that they have been found desirable in the interests of literature, but experience has so often shown that legislation of a kindred kind has been due rather to the influence of the producing than to that of the consuming classes that this evidence cannot be accepted as conclusive.

17. Under existing circumstances there can be of course, as yet, little experimental proof to adduce as to the effect of giving free play to the laws of supply and demand with respect to the published works of an author; but it cannot, I think, be questioned that even if the effect of the present copyright law of this country has been less injurious than I believe it to have been to the interests of authors, it has entirely failed in securing for the public an adequate supply of literature.

18. It may indeed be said without exaggeration that new books are a luxury, the possession of which is confined to the wealthy class, and that they are placed by their price altogether beyond the reach of the great bulk of the people.

19. It may no doubt be argued that this result is due to the inefficiency of demand, and not to the existing restrictions of supply; but there seems to me to be no reason for assuming that literature forms an exception to the rule, which experience has shown to be generally applicable to whatever possesses exchangeable value, viz., that under a system of unrestricted competition the interests of the producer, as well as those of the consumer, are best secured.

20. I believe that the present state of public opinion on this subject is to be attributed to a totally inadequate conception of the literary requirements of an educated community; and I think that it might be found that if the supply of literature could be largely increased, so as to bring the price within the reach of the masses of the people, it would react upon the demand to an extent which would afford possibilities of literary profit far exceeding anything which has hitherto been attained or imagined.

21. The exchangeable value of a published work depends, not on its cost of production, but on the relation of supply and

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building a similar house or cottage; or the still more extravagant proposal that an artist shall, without special stipulation, retain a right to prevent each and every subsequent owner of his pictures from copying, engraving, or photographing them, and shall have the power to seize any copies of them without warrant, and to treat the holder of such copies as a criminal unless he can explain where he got them. It is the insistance by English authors on these views of their own rights which has embittered the discussion of the subject of copyright with Canada and with the United States."

This sujbect is treated at length in a further MS. paper by Mr. Farrer, which, as a member of the Commission, I have had the advantage of seeing.

demand, and I believe that it will always be in the power of the first publisher of a work so to control the value by a skilful adaptation of the supply to the demand as to avoid the risk of ruinous competition, and secure ample remuneration both to the author and to himself.

22. It is doubtless true that this would not be possible in the case of unknown authors, unless their works were of a nature which possessed wide and immediate interest, but however great the intrinsic value of the productions of the class of literary men who might thus suffer, there appears to be nothing in which their position would differ from that of those in other professions and occupations in the early stages of their career, and who have not succeeded in establishing a public reputation.

23. I have been much impressed by the evidence received by the Commission on the operation of the system which prevails in the United States of America. In that important market for English books, although there exists no law which protects a foreign work from re-publication, it has been found in practice that it is the interest of publishers to make arrangements with British authors of eminence, by which they receive a remuneration which, if not equal by way of a per-centage on profits to that which they receive from the publishers of this country under the copyright law, is, nevertheless, of a substantial kind, and sometimes, in consequence of the larger circulation of their works at a cheaper price, larger even in amount than that which they derive from their copyright editions at home.

* * * * .

89. In conclusion I have only to state, that except as regards the questions to which I have referred in the foregoing remarks, I concur in the recommendations contained in the Report of the Commission.

All which is humbly submitted for Your Majesty's gracious consideration.

LOUIS MALLET. (L.S.)

III.

THE MANNERS AND OTHER BILLS

BETWEEN

1878 AND 1891.

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Two Parliamentary members of the Commission, Mr. Edward Jenkins, M.P., and Mr. Herschell, Q.C. (now Lord Herschell), lost no time in endeavouring to carry out its recommendations. On the 9th December 1878 a Bill (No. 53) "ordered to be "brought in by Mr. E. Jenkins, Mr. Herschell, Mr. Dillwyn, and "Mr. Forsyth," was presented and read a first time. This Bill, which was entitled "A Bill to *codify* and amend the law "of copyright," was never printed, but both its title and the names of its supporters invest the mere fact of its introduction with very great importance.

Not long afterwards the Government took the matter up by the introduction of a Bill, by Lord John Manners, Viscount Sandon, and the Attorney-General, commonly called the "Manners Bill," "to consolidate and amend the law of copyright," which was read a first time on the 29th July 1879, just before the recess. The dissolution of Parliament early in 1880, and the change of Government which followed the general election of that year, naturally cut short the fortunes of this measure, but happily not before it had been printed.

The Manners Bill, termed the "Copyright (No. 2) Bill" to distinguish it from the unprinted measure of Mr. Edward Jenkins, was, very unfortunately, not prefixed by a memorandum epitomising its contents. But it may be very briefly described as a Bill to carry out the recommendations of the Commission, though those recommendations were in a few cases departed from. In 76 clauses it proposed to repeal and re-enact, with such amendments as the Commission had recommended, the fourteen then existing Copyright Acts from 8 Geo. 2. c. 13. to 25 & 26 Vict. c. 68. Excepting that the interpretation clause is placed at the end, not at the beginning, of the Bill, it is well arranged, and, considering the difficulty of the subject, fairly easy to understand on the most

cursory perusal. The 20th clause, as to newspaper copyright, is subjoined:—

20.—(1.) The provisions of this Act with respect to books published in series shall apply to a newspaper, so far as the newspaper contains original compositions of a literary character, but shall not apply to such portion of a newspaper as contains news.

(2.) The publisher of a newspaper shall, within one week after the publication of every number thereof, deliver a copy of that number to the trustees of the British Museum, and in default shall be liable to the same fine to which the publisher of a book is liable on failing to deliver a copy thereof to those trustees.

Amongst the departures from the recommendations of the Commissioners was that of the 18th clause, by which it was proposed that the delivery of certain copies of books to four libraries, as well as to the British Museum, required by ss. 6–10 of the Act of 1842, should still be required to be made at the expense of the publishers, although the Commissioners had recommended that such libraries should no longer thus be able to acquire books without paying for them. With respect to paintings and drawings, it was proposed by clause 28, that where they should be sold or executed on commission, the copyright therein should vest in the purchaser or person giving the commission, unless the artist should reserve the copyright in writing.

The Manners Bill, however, has never been subjected to criticism or even discussed, either in Parliament or out of it, and is now chiefly valuable as affording evidence of the intention of the Government of the day to deal with the question comprehensively on the lines of the Report of the Commission.

In the sessions of 1881, 1882, 1884, 1885 and 1886 successively, a Copyright (Works of Fine Arts) Bill, extending to paintings, drawings, sculpture, engravings, and photographs, was introduced by Mr. Hastings (being backed in 1886 by Mr. Gregory and Mr. Agnew), and, as we shall see (post p. 87), many of its provisions have been incorporated in Lord Monkswell's Bill now before the House of Lords. It was entitled "A Bill to amend and consolidate "the law of Copyright in Works of Fine Arts and in Photographs, "and for repressing the commission of fraud in the production "and sale of such works." In the main following the Report of the Royal Commission, it departed from the recommendations of that Commission in giving the copyright in a work sold to the artist instead of the purchaser unless expressly reserved, and travelled beyond them in giving extensive powers of search for pirated copies of copyright works. The Bill attained a second reading in 1882, but failed to pass through committee, principally owing to the opposition of Sir H. Drummond-Wolff (one of the Copyright Commissioners), who not only objected to the 4th clause, giving an artist copyright in his work, but also to the whole

Bill, on the ground of unsatisfactory drafting, and was anxious "that there should be no legislation on copyright in this country "until some arrangement was made with foreign countries on the "subject"*—an objection since removed by the conclusion of the Berne Convention. The Bill was a consolidating as well as an amending one.

In 1882 and 1888 two Bills, both of which became law under the name of "Copyright Musical Compositions Acts," were introduced in the House of Commons, the first by Mr. Gorst, Mr. Arthur Balfour, Mr. Beresford Hope, and Viscount Folkestone, and the second by Mr. Addison, Mr. Bartley, Mr. Dillwyn, and Mr. Lawson. Both Bills had the same object, to protect the public from vexatious actions by the owners of musical copyright brought at the instance of "The Authors', Composers', and Artists' Copyright and Performing Right Protection Association."† With this object the Act of 1882 requires that the copyright owner, if he desires to retain his privilege of exclusive representation, must print a notice to that effect on each copy of his musical composition, and the Act of 1888 reduces the penalty for unauthorised representations from 40*s.* for each representation to a reasonable amount.

The celebrated Berne Convention was provisionally agreed to in 1885 by the representatives of this country, Germany, Belgium, Spain, France, Haïti, Italy, Switzerland, and Tunis, and was quickly followed by the International Copyright Act, 1886, which gave her Majesty power to agree to it, and at the same time improve the condition of colonial authors as recommended by the Commission. The official translation from the original French of the Berne Convention is printed in the Appendix.

Towards the close of 1890 the literary world learned the news that the House of Representatives of the United States had agreed to a Copyright Bill giving copyright to foreign authors, but giving it on the condition that their works should be first printed in the United States. This Bill is also printed at length in the Appendix.

The imposing of the condition of transatlantic printing as precedent to transatlantic copyright, though it must have been long expected, has caused considerable dissatisfaction in this country, and not a few voices have been raised in favour of retaliatory measures. The pronouncement of the Royal Commissioners of 1878 against such measures has been already given

* *Hansard*, cclxix., 949.

† See Speech of Lord Chancellor (Lord Halsbury), *Hansard*, vol. cccxxv., p. 299.

(par. 251 of Report, ante. p. 69). In 1888 the President of the Board of Trade (Sir Michael Hicks Beach) stated in the House of Commons* that he had inquired into the subject in connection with similar legislation then proposed, and "ascertained that so much importance was attached to such provisions in the United States that it was not at all likely that any representation from Her Majesty's Government in favour of their withdrawal would be entertained." But he added that "the matter might be further considered with advantage when we dealt with copyright legislation in this country." It was at first confidently expected that the present American Bill would pass the Senate and become law in July next, but later prospects are not so favourable.

* *Hansard*, cccxxx., p. 308.

IV.

LORD MONKSWELL'S BILL.

IV.

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This Bill has a very satisfactory history. To describe it shortly, it is in the main the same Bill as that which was laid before the Board of Trade in 1886 by Mr. Underdown, Q.C., who, in addressing Mr. Mundella on behalf of a deputation consisting of members of the Incorporated Society of Authors (which Society originated the measure) and leading publishers, stated that the Bill then laid before the Board had the general approval of all interested in copyright law reform. Since these words were spoken the International Copyright Act has become law. In order to bring the Bill fully up to date it has again been fully considered and revised under the instructions of a Committee of the Society of Authors, by whom it was placed in the hands of Lord Monkswell at the close of last Session.

The following is the Memorandum prefixed to the Bill:—

MEMORANDUM.

Scope of Bill.—This Bill is intended to consolidate and amend the law of copyright other than copyright in designs.*

Existing Law.—The existing law on the subject consists of no less than eighteen Acts of Parliament,† besides common law principles, which are to be found only by searching the law reports. Owing to the manner in which the Acts have been drawn, the law is in many cases hardly intelligible, and is full of arbitrary distinctions for which it is impossible to find a reason. *See* paragraphs 9 to 13 of the Report of the Royal Commission on Copyright of 1878 (ante Ch. II.).

Instances of Defects of Existing Law.—For instance, the term of copyright in books is the life of the author and seven years, or forty-two years from publication, whichever period is the longer; in lectures, when printed and published, the term is (probably) the life of the author or twenty-eight years; in engravings twenty-eight years, and in sculpture fourteen years, with a possible further extension for another fourteen years, while the term of copyright in music and lectures, which have been publicly performed or delivered but not printed, is wholly uncertain. Again, the necessity for and effect of registration is entirely different with regard to (1) books, (2) paintings, (3) dramatic works.

Arrangement of Bill.—In consolidating these enactments (all of which it is proposed to repeal) it has been thought advisable to deal separately with the

* The law of copyright in designs is contained in Part III. of the Patents, Designs, and Trade Marks Act, 1883, 46 & 47 Vict. c. 57., repealing and re-enacting with amendments the Copyright of Designs Acts of 1842, of 1843, of 1850, of 1861, and of 1875.

† See Chapter I. ante.

various subjects of copyright, viz.: (1) literature, (2) music and dramatic works, and (3) works of art, and to make the part of the Bill dealing with each of these as far as possible complete in itself. This will account for certain repetitions which might otherwise seem unnecessary.

Foundation of Amendments.—The alterations proposed to be made in the law are for the most part those suggested in the Report of the Royal Commission on Copyright of 1878, and embodied in a Bill introduced at the end of the Session of 1879 by Lord John Manners, Viscount Sandon, and the Attorney-General, on behalf of the then Government. References will be found in the margin of the present Bill both to the Report of the Commission and the Bill of 1879.

Summary of Chief Amendments.—The most important of these alterations may be summarised as follows:—

1. A uniform term of copyright is introduced for all classes of work, consisting of the life of the author and thirty years after his death. The only exceptions are in the cases of engravings and photographs, and anonymous and pseudonymous works for which, owing to the difficulty or impossibility of identifying the author, the term is to be thirty years only, with power for the author of an anonymous or pseudonymous work at any time during such thirty years to declare his true name and acquire the full term of copyright. [*See* Clause 15 (books), Clause 29 (music and drama), Clause 36 (works of fine art and photographs).]
2. The period after which the author of an article or essay in a collective work (other than an encyclopædia) is to be entitled to the right of separate publication is reduced from twenty-eight years to three years. [*See* Clause 15.]
3. The right to make an abridgment of a work is for the first time expressly recognised as part of the copyright, and an abridgment by a person other than the copyright owner is made an infringement of copyright. [*See* Clauses 5 and 21.]
4. The authors of works of fiction are given the exclusive right of dramatising the same as part of their copyright, and the converse right is conferred on authors of dramatic works. [*See* Clause 21, par. 2.]
5. The exhibition of photographs taken on commission, except with the consent of the person for whom they are taken, is rendered illegal.* [*See* Clause 41.]
6. Registration is made compulsory for all classes of work in which copyright exists, except paintings and sculptures; that is to say, no proceedings for infringement or otherwise can be taken before registration, nor can any proceedings be taken after registration in respect of anything done before the date of registration, except on payment of a penalty. [*See* Clause 90.] This penalty, it should be mentioned, was not recommended by the Royal Commission, but is introduced in order that an accidental omission to register may not entirely deprive the copyright owner of his remedies. Registration of paintings and sculpture is made optional owing to their being so frequently subject to alteration that it is practically impossible to say when they are completed, so as to be capable of registration.
7. Provision is made for the seizure of piratical copies of copyright works which are being hawked about or offered for sale. [*See* Clause 89.] Some such provision is required, particularly for the protection of works of art, and was recommended by the Royal Commission.

* At present it seems to be merely a matter of implied contract. See Pollard *v.* the Photographic Company, 40 Ch. D. 345.

Fine Arts and Photography.—The part of the Bill [Part III.] which relates to the fine arts and photography is taken, almost without alteration, from the Copyright (Works of Fine Art) Bill, which was introduced into the House of Commons in the Session of 1886 by Mr. Hastings, Mr. Gregory, and Mr. Agnew. That Bill received the general approval of those interested in the Fine Arts; and although it does not altogether follow the recommendations of the Royal Commission, there does not appear to be any serious reason against adopting its provisions.

Foreign and Colonial Copyright.—The part of the Bill [Part IV.] which relates to Foreign and Colonial Copyright is practically a re-enactment of the provisions of the International Copyright Act, 1886, which was passed in order to carry into effect the "Berne Convention," for giving to authors of literary and artistic works first published in one of the countries parties to the Convention copyright in such works throughout the other countries parties to the Convention.

By the earlier parts of the Bill the same rights are given to colonial as to British authors; while the right of the colonial Legislatures to deal with the subject is expressly recognised and preserved. The Foreign Reprints Act of 1847 (10 & 11 Vict. c. 95.) is re-enacted in the form adopted in the Bill of 1879, but it has not been found possible to frame provisions for the introduction of any such licensing system of re-publication in the Colonies as that suggested by the Royal Commission. There appear to be great difficulties in providing for the practical working of any such system, and even if they could be overcome, it is felt that while it is more than doubtful whether the colonial reader would benefit to any great extent, the British copyright owner must suffer considerable loss.

Registration.—With regard to registration, the Bill (as was recommended by the Royal Commission) provides [*see* Part V.] for the establishment of a Copyright Registration Office under the control of Government in lieu of the present office at Stationers' Hall, established under 5 & 6 Vict. c. 45. It is felt, however, that the details and formalities of any scheme of registration can only be satisfactorily settled by Government officials, and the provisions of Part V. of the Bill are put forward rather by way of suggestion than as a definitely settled scheme. It may be found desirable, either now or hereafter, to combine the Copyright Registration Office with the Registry of Designs and Trade Marks, and this part of the Bill has, therefore, as far as possible, been modelled on the corresponding provisions of the Patents, Designs, and Trade Marks Act, 1883.

Chief Points of Departure from Report of Commission.—The chief points on which the recommendations of the Royal Commission are departed from in the present Bill, are as follows:—

1. The Commissioners recommended that the universities and libraries (other than the British Museum) which are now entitled to receive a copy of every book published in the United Kingdom, should be left to purchase the books they required in the market, and that their present privilege should be taken away. But from communications which have been received from the librarians, it appears that they are most anxious to retain their present privilege, that the libraries could not be properly supplied if it were abolished, and that the cases in which it can cause any real hardship are very few. The Bill therefore provides for the continuance of the supply to these institutions. [*See* Clause 25.]
2. With regard to the fine arts, the Commissioners were of opinion that the copyrights in paintings, &c. should pass to the purchaser, unless specially reserved to the artist. Under the Bill, however, the copyright will remain in the artist unless expressly assigned to the purchaser. [*See* Clause 35.] This, it is believed, is in accordance with the general

wish of artists, and as no replica can be produced without the consent of the owner of the original painting, no injury will be inflicted on purchasers, who will, moreover, have the right (under section 46) of preventing unauthorised reproduction, even though they have not (as of course it will be open to them to do) taken an express assignment of the copyright. Practically, the only effect of the artist retaining the copyright after parting with the picture, will be to give him a control over its reproduction, by engraving or otherwise; and this control it seems proper that he should have.

3. The exception made in the Act, 5 & 6 Will. 4. c. 65. s. 5, with respect to lectures delivered in the universities and elsewhere, is not proposed to be re-enacted in the present Bill. [*See* Clause 21, par. 3 and Clause 23.] What the exact meaning and effect of that exception may be seems to be far from clear (see the observations of the Lords in Caird *v.* Sime, L. R. 12, App. Ca. 326); and, moreover, it does not by any means seem to follow that because a lecture is delivered in a university or in virtue of an endowment or foundation, the lecturer should be deprived of rights conferred on all other lecturers, whether they are paid for their services or not.
4. The omission of any provision for the introduction of a licensing system into the Colonies; and
5. The right given to a copyright owner of taking proceedings in respect of infringements committed before he registers his title, on payment of a penalty, have been already noticed and explained.

Further Alterations.—In addition to the proposed alterations specified in the above memorandum, may be mentioned—

That which (*see* post p. 90) gives newspaper copyright in literary matter, but not in news.

Those which (*see* post p. 93) bind the painter of a portrait on commission not to repeat it, which forbid a replica being made without the consent of the owner of the original, and which allow an artist to use the sketches of a work of which he has sold the copyright.

That which gives copyright throughout the British dominions to *aliens*, wherever resident at the time of publication, as well as to British subjects in any works published in some part of the British dominions—thus solving in favour of aliens the doubts raised in the House of Lords in Routlege *v.* Low, L. R. 3 H.L. 100, A.D. 1868.

Omissions from Bill.—Although both the Copyright Musical Compositions Acts of 1882 and 1888, which protect the public from vexatious proceedings for the recovery of penalties for unauthorized performance of musical compositions, are repealed, and in part re-enacted, by an omission, no doubt unintentional, the requirement of the Act of 1882, that a printed notice of reservation of right of representation be placed upon each copy of any musical composition by the proprietor of its copyright who desires to reserve it, has not been reproduced.

Crown Copyright.—Crown copyright, by virtue of which "it is said that Her Majesty and Her successors have the right of granting by patent from time to time to their printers an exclusive right to print the text of the authorised version of the Bible, of the Book of Common Prayer, and possibly the text of Acts of Parliament" (see *Steph. Dig.*, Art 10, and *Copinger on Copyright*, ch. ix.), is not dealt with. It will come under the operation

of the rule that the Crown is not bound by a Statute unless expressly named. As to copyright in Government publications, *see* Treasury Minute, App. A. post.

Customs' Seizure.—It is not proposed to transfer to the Bill that part of the General Customs Act of 1876 (*see* p. 6) which gives the Customs authorities power to seize pirated books.

Canada Copyright Act, 1875.—This Act (*see* p. 6) is left untouched.

Selected Clauses of Bill.—The clauses dealing with existing rights have been already dealt with (ante, ch. I., p. 15). A selection of other important clauses, or parts of clauses, of the Bill is now subjoined:—

5. *Interpretation.*—In and for the purposes of this Act, unless the context otherwise requires,—

"Book" shall mean any volume, part or division of a volume, periodical, pamphlet, newspaper, sheet of letterpress, sheet of music, map, chart, or plan separately published; and any musical composition, print, photograph, illustration, or other work published in and forming part of a book, shall be deemed and taken to be a part of the book in which it is published:

"Collective work" shall mean a book which consists of various articles, essays, poems, musical compositions, prints, photographs, or other works written, composed, engraved, made, photographed, or produced by different persons, and published together in one or more volumes:

"Copyright" shall mean and include—

In the case of books, (1) the exclusive right of printing or otherwise multiplying copies of them by any means or process, and in any size or shape, and of publishing, exposing for sale, selling, and distributing the same.

(2) The sole and exclusive liberty of translating, abridging, and (as regards works of fiction) dramatising the same, and where the context or the sense requires shall include performing right.

In the case of lectures, pieces for recitation, addresses, and sermons, the exclusive right of printing, publishing, selling, distributing, and multiplying copies of them, and, unless they be published in print by the author, the exclusive right of re-delivering them in public:

"Publication" shall have the following meanings—

In the case of books, the first act of offering for sale, notifying, or exposing as ready for sale to the public any work or copy of a work, or the depositing or registering of any copy of a work in the manner provided in this Act:

In the case of a lecture, piece for recitation, address, or sermon which is printed, any act which constitutes publication in the case of a book, or, if such lecture, piece, address, or sermon be not published in a printed form, the first delivery in public:

"Translation" shall include an abridgment or adaptation of a book in a language different from that in which it was previously published.

* * * *

11.—(1.) Every assignment of copyright or performing right other than an assignment by operation of law or testamentary disposition, shall be in writing, signed by the assignor or his agent, duly authorised in writing.

(2.) No assignment of or other dealing with any subject of copyright or performing right (other than an assignment by operation of law or testa-

mentary disposition) shall pass the copyright or performing right therein unless the intention to assign the same shall be expressly evidenced in writing, signed as aforesaid.

12. If the owner of the copyright or performing right in any work shall give permission to another person to copy, imitate, perform, or otherwise repeat such work, such permission shall not, in the absence of an express agreement to the contrary, disentitle such owner from giving a similar or any other permission with respect to the same work, even though the first person to whom such permission was given has acquired copyright or performing right in his work.

* * * *

15. *Duration of Copyright in Literary Works.*—Copyright in books, lectures, pieces for recitation, addresses, and sermons, shall endure for the following terms:—

(1.) If the work is published in the lifetime and in the true name of the original copyright owner, for the life of the original copyright owner, and thirty years after the end of the year in which his death shall take place:

(2.) If the work is written or composed by two or more persons jointly, for the life of the longest liver, and thirty years after the end of the year in which his death shall take place:

(3.) In the case of posthumous works, for thirty years from the end of the year in which the same shall have been first published:

(4.) In the case of an anonymous or pseudonymous work, for thirty years from the end of the year in which the same shall have been first published: Provided always that upon the original copyright owner thereof or his personal representative, during the continuance of the said term of thirty years, with the consent of the registered copyright owner, making a declaration of the true name of the "original copyright owner" and the insertion thereof, in the form set forth in the Schedule Three of this Act in the Register, the copyright shall, subject to the provisions of this Act, be extended to the full term of copyright under this Act.

16. *Copyright in Articles in Collective Works.*—(1.) In the case of any article, essay, or other work whatsoever, being the subject of copyright, first published in and forming part of a collective work for the writing, composition, or making of which the original copyright owner shall have been paid or shall be entitled to be paid by the proprietor of the collective work, the copyright therein shall, subject as is herein-after mentioned, and in the absence of any agreement to the contrary, belong to such proprietor for the term of thirty years next after the end of the year in which such work shall have been first published:

(2.) Except in the case where such article, essay, or other work is first published in an encyclopædia, the original copyright owner thereof and his assigns shall, after the term of three years from the first publication thereof, have the exclusive right to publish the same in a separate form, and shall have copyright therein as a separate publication for the term provided by section fifteen of this Act, and, notwithstanding anything herein-before contained, the proprietor of the collective work shall not, either during the said term of three years, nor afterwards during the continuance of copyright therein, be entitled to publish such article, essay, or other work, or any part thereof, in a separate form, without the consent in writing of the original copyright owner or his assigns.

* * * *

19. *Newspaper Copyright.*—The copyright given by this Act in respect of newspapers shall extend only to articles, paragraphs, communications, and

other parts which are compositions of a literary character, and not to any articles, paragraphs, communications, or other parts which are designed only for the publication of news, or to advertisements.

* * * *

21. *Infringements.*—The following acts by any person other than the copyright owner, and without his consent in writing, shall be deemed to be infringements of copyright, unless such acts shall be specially permitted by the terms of this or some other Act not hereby repealed:

(1.) In the case of books, printing or otherwise multiplying, or causing to be printed or otherwise multiplied, for distribution, sale, hire, or exportation, copies, abridgments, or translations of any copyright book or any part thereof; exporting for sale or hire any such copies, abridgments, or translations, printed unlawfully in any part of the British dominions; importing any such copies, abridgments, or translations, whether printed unlawfully in any other part of the British dominions or printed without the consent of the copyright owner in any foreign state; or knowing such copies to have been so printed or imported, distributing, selling, publishing, or exposing them for sale or hire, or causing or permitting them to be distributed, sold, published, or exposed for sale or hire:

(2.) In the case of a book which is a work of fiction, it shall also be an infringement of the copyright therein if any person shall, without the consent of the owner of the copyright, take the dialogue, plot, or incidents related in the book, and use them for or convert them into or adapt them for a dramatic work, or knowing such dramatic work to have been so made, shall permit or cause public performance of the same:

(3.) In the case of lectures, pieces for recitation, addresses, or sermons, whether before or after they are published in print by the owner of the copyright, the same acts as hereinbefore declared to be infringements in the case of books, and if they be not published in print by the owner of the copyright, re-delivering them or causing them to be re-delivered in public.

22. *Extracts.*—Notwithstanding anything in this Act contained, the making of fair and moderate extracts from a book in which there is subsisting copyright, and the publication thereof in any other work, shall not be deemed to be infringement of copyright if the source from which the extracts have been taken is acknowledged.

23. *Reporting Lectures.*—It shall not be deemed an infringement of copyright in a lecture, piece for recitation, address, or sermon to report the same in a newspaper, unless the person delivering the same shall have previously given notice that he prohibits the same being reported.

24. *New Editions.*—For the purposes of this Act any second or subsequent edition of a book which is published with any additions or alterations, whether in the letterpress or in the maps or illustrations belonging thereto, shall be deemed to be a new book.

* * * *

PART III.

Copyright in Works of Fine Art and Photographs.

34. *Definitions.*—In addition to the interpretation given in Part I. of this Act the following expressions in this Part III. shall, unless the context otherwise requires, have the following meanings:

"Painting" shall mean and include a painting either in or with oil, distemper, water, or other vehicle, and drawing, either in crayons, charcoal, pastels, chalk, pencil, ink, or any other material, executed by hand and not by printing impression, or any mechanical or chemical process; and "painter" shall mean any person who executes a painting as above defined:

"Photograph" shall mean and include the photographic negative and any positives or copies made therefrom:

"Publication" shall mean—

In the case of engravings and photographs, the first act of offering for sale, or of delivering to a purchaser, or advertising, notifying, or exposing as ready for sale to the public or for delivery to a purchaser, any copy of a work, or delivering at the registration office established under this Act a written request for the registration of such work as herein-after provided; and the verb "to publish," in all its moods and tenses, shall have a meaning corresponding with that of publication:

"Replica" shall mean a repetition of a painting executed by the painter thereof, or caused by him to be executed in the same material, and of, or so nearly of, the same size as to render doubtful the identity of the original work:

"Work of fine art" shall mean and include a painting, sculpture, and engraving as defined in this Act.

35. *Artist to have Copyright in his Work, and in the Design if Original.*—(1.) Every person, being a British subject, or domiciled in some part of the British dominions, who from or according to his own original design shall execute, or cause to be executed, any work of fine art, shall have copyright therein, that is to say, the sole right of copying, reproducing, repeating, and multiplying copies of that work, and of the design thereof, of any size, and either in the same material or by the same kind of art in which such work shall have been first executed, or in any other form or material or by any other kind of art, and the word "copyright," when used in relation to works of fine art executed under the conditions in this first sub-section set forth, shall mean such right as aforesaid.

(2.) *Not in the Design, if not Original.*—Every such person who, from the design of another, shall, without infringing any copyright, lawfully execute any work of fine art, shall (except when employed to execute the same by the author of that design, and in the case of an engraving except further when employed to execute the same by any other than such author) have copyright therein, that is to say, the sole right of copying, reproducing, and multiplying copies of the same work, but not, save as expressed in that work, the design thereof, and the word "copyright," when used in relation to works of fine art executed under the conditions in this second sub-section set forth, shall mean such right as aforesaid.

(3.) In the case herein before excepted of an engraving executed by some person employed for that purpose by another, the copyright shall belong to the employer if a British subject or domiciled as aforesaid at the time when such engraving shall be published, although not the author of the design.

(4.) Nothing herein contained shall have the effect of giving any person copyright in a copy or repetition of a painting by a painting, of sculpture by sculpture, or of an engraving by an engraving, except in the case of a copy or imitation by a painting in black and white or monochrome of a painting in polychrome.

(5.) This section shall apply to works of fine art executed either before or after the passing or commencement of this Act: Provided as to works executed before the passing or before the commencement of the Act, that the same, if paintings or sculpture, have not been sold, and, if engravings, have not been published, before the commencement of the Act.

36. *Duration of Copyright.*—The copyright herein-before given shall, in the case of paintings and sculpture, endure for the life of the person to whom the same is so given, and *thirty years* next after his death; and in the case of engravings not published in or forming part of a book, for the term of *thirty years* next after the end of the year in which they shall be published.

37. *Painter of Portrait on Commission not to repeat it.*—If the subject of or the principal object in any painting executed on the order of any person for valuable consideration be the likeness of that person or of any person whose likeness was stipulated in the agreement for the painting, the painter or other owner of the copyright shall not by virtue of his copyright be entitled without the consent in writing of the owner for the time being of the painting to repeat, copy, or reproduce the said likeness in any way or by any kind of art.

38. *Replica not to be made without leave of Owner of Original.*—Whenever any painting shall have been sold, and the copyright therein shall remain the property of the painter, he shall not without the consent in writing of the purchaser or other owner of the painting, be entitled by virtue of the coyyright to make or cause to be made a replica of such painting, and if, before selling the painting, the painter shall have made or caused to be made a replica of it, and shall afterwards sell the one, he shall not, without the consent of the purchaser or owner of that one, be entitled to sell, exhibit, or part with the property in the other.

* * * *

41. *Photographs taken on Commission not to be Sold or Exhibited.*—(1.) Whenever after the commencement of this Act any photographic likeness of any person is taken on commission, neither the photographer, nor any other person, whether he owns the copyright therein or not, shall, without the consent in writing of the person for whom the work was executed, sell, offer for sale, or exhibit in public in any shop window or otherwise any copy of such likeness.

(2.) If such photographer or other person shall sell, offer for sale, or exhibit any copy of such likeness in manner aforesaid, every copy of such likeness in his possession shall be forfeited and delivered up to the person for whom the work was executed.

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PART IV.

Foreign and Colonial Copyright.

The British Colonial and other Possessions.

51. *Saving for Colonial Legislative Powers.*—Nothing in this Act is intended or shall be construed in such a manner as to lessen or derogate from any power at present possessed by the legislative authorities in any British possession to legislate with respect to copyright in that possession, nor in such a manner as to deprive any person in a British possession of any copyright or performing right he may be entitled to or may hereafter acquire in such possession under any law now in force or hereafter to be made in such possession, or to interfere with or lessen such right.

* * * *

PART VI.

Penalties and Procedure.

87. *Damages.*—(1.) If any person shall infringe copyright or performing right, the owner thereof may, in addition to any other remedy, maintain an action or other proceeding allowed by the law of the place where the wrong has been committed for damages and for an injunction, or either of them.

(2.) All actions or other proceedings for any such infringement shall be commenced within twelve calendar months next after the same is committed, or else the same shall not be maintainable.

* * * *

90. *No Action, &c. before Registration.*—(1.) No action, prosecution, or summary or other legal proceeding shall be maintained or maintainable in respect of any infringement of copyright or performing right under this Act, except as is herein-before provided as to foreign works, and except it be for infringement of copyright in a painting or work of sculpture, until the work has been registered at the Copyright Registration Office established under this Act, or at a registration office in some British possession, and no such action, prosecution, or summary or other legal proceeding shall after registration be maintained or maintainable in respect of any infringement committed before the date of registration of the work, unless or until in any such proceeding a penalty of *ten* pounds, or such less sum as the court may direct, shall have been paid.

(2.) If any copies, repetitions, or imitations of the work have been made before registration of the work, no action or other proceeding shall (except upon payment of such penalty as aforesaid) be maintained or maintainable after registration in respect of the circulation or sale of such copies, repetitions, or imitations, or to enforce any forfeiture or penalty in respect thereof.

(3.) Provided always that registration of any work within one month from the first publication thereof shall enure for the benefit of the copyright owner as from the date of the publication.

91. *Summary Remedy for Infringement.*—In lieu of any action or other proceeding for damages it shall be lawful in every case of infringement of copyright or of performing right, except of performing right in musical compositions, for the owner of the right to apply in a summary manner to a court of summary jurisdiction in that part of the British dominions where the wrong has been committed, or where the person who has been guilty of the infringement dwells; and such court may, on production of the certificate of registration, or in the case of paintings and sculpture, on other proof of the title of the applicant, order the person who has been guilty of the infringement to pay a penalty not exceeding *five pounds* and all costs, and the money so paid as penalty shall be given by way of compensation to the owner of the copyright or performing right. Provided that only one sum or penalty shall be recovered in respect of any infringement of the performing right in a dramatic work.

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APPENDIX.

A.—Treasury Minute as to Copyright in Government Publications.

B.—The Berne Convention.

C.—The American Copyright Bill.

APPENDIX.

A.

TREASURY MINUTE dealing with the COPYRIGHT in GOVERNMENT PUBLICATIONS, dated 31st August 1887.

MY LORDS take into consideration the correspondence which has passed between the Treasury and the Stationery Office on the subject of Copyright in Government publications.

The law gives to the Crown, or the assignee of the Crown, the same right of copyright as to a private individual. Consequently, if a servant of the Crown, in the course of his duty for which he is paid, composes any document, or if a person is specially employed and paid by the Crown for the purpose of composing any document, the copyright in the document belongs to the Crown as it would in the case of a private employer.

The majority of publications issued under the authority of the Government have no resemblance to the works published by private publishers, and are published for the information of the public and for public use, in such manner as any one of the public may wish, and it is desirable that the knowledge of their contents should be diffused as widely as possible.

In other cases the Government publishes at considerable cost works in which few persons only are interested, but which are published for the purpose of promoting literature and science.

These works are of precisely the same character as those published by private enterprise.

In order to prevent an undue burden being thrown on the taxpayer by these works, and to enable the Government to continue the publication of works of this character to the same extent as heretofore, it is necessary to place them, as regards copyright, in the same position as publications by private publishers. If the reproduction of them, or of the most popular portions of them, by private publishers, is permitted, the private publisher will be able to put into his own pocket the profits of the work, which ought to go in relief of the general public, the taxpayers.

The question, then, is, what are the classes of works the reproduction of which is to be restricted, or to be left unrestricted?

Government publications may be classified as follows:—

(1.) Reports of Select Committees of the two Houses of Parliament, or of Royal Commissions.

(2.) Papers required by Statute to be laid before Parliament, *e.g.*, Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.

(3.) Papers laid before Parliament by Command, *e.g.*, Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.

(4.) Acts of Parliament.

(5.) Official books, *e.g.*, Queen's Regulations for the Army or Navy.

(6.) Literary or quasi-literary works, *e.g.*, the Reports of the "Challenger" Expedition, the Rolls Publications, the forthcoming State Trials, the "Board of Trade Journal."

(7.) Charts and Ordnance Maps.

As respects the first five classes of publications, the reproduction of them, with certain exceptions, should not be restricted in any form whatever. Indeed, in most cases it is desirable that they should be made known to the public as widely as possible.

The first exception is, that Acts of Parliament and official books should not, except when published under the authority of the Government, purport on the face of them to be published by authority.

The second exception is, where a work of a literary or quasi-literary character comes accidentally within these classes. For example, the Reports of the Historical Manuscripts Commission would, but for the fact that they were produced under the direction of a Commission instead of under the Master of the Rolls, be published in the ordinary manner like the Rolls publications, and come within class 6.

So, again, a Report to a Government Department may be laid before Parliament made by a person of eminent scientific knowledge who is willing to give the Government and the public the advantage of his knowledge, but not to allow it to be reproduced for the private benefit of an individual publisher. Mr. Whitehead's Reports on Injurious Insects are an instance of this case.

Other exceptions will, no doubt, from time to time occur, which can only be dealt with as they arise.

As regards the sixth and seventh classes above mentioned, it seems desirable that the copyright in them should be enforced in the interests of the taxpayer, and of literature and science. For, as pointed out above, unless copyright is enforced, cheap copies of the works, or of the popular portion of them, can be produced by private publishers, who reap the profit at the expense of the taxpayer. And as such works are in any case a burden on the taxpayer, the greater the burden the fewer works can the Government, with justice to the taxpayer, undertake.

Notice of the intention to enforce the copyright in any work should be given to the public. In the case of future works this notice can be given by prefixing to the work a notice to the effect that the rights of copyright are reserved. In the case of past works it will be desirable to inform the publishing trade of the works the reproduction of which, without permission, is forbidden.

As respects Acts of Parliament, the Government, in obedience to the wishes of Parliament expressed by Select Committees, are bound to publish an edition of them by authority as cheaply as practicable, and a nearly similar remark applies to official publications. For this purpose the Controller of the Stationery Office shall be appointed Her Majesty's Printer, but care will be taken not to infringe on any existing privileges granted by the Crown.

Let instructions be given to the Controller of the Stationery Office and to the Solicitor in pursuance of this Minute.

B.

The Berne Convention.

Article I.

The Contracting States [*which are Great Britain, Germany, Belgium, Spain, France, Haïti, Switzerland, and Tunis*] are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

ARTICLE III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

ARTICLE IV.

The expression "literary and artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts ("livraisons") the period of ten years commences from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific Societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication.

ARTICLE VI.

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles II. and III. as regards their unauthorized reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE VII.

Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or *current topics*.

ARTICLE VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

ARTICLE IX.

The stipulations of Article II. apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works.

The stipulations of Article II. apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title-page or commencement of the work that he forbids the public performance.

ARTICLE X.

Unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations, arrangements of music*, &c., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the Tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

ARTICLE XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the Tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

ARTICLE XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State.

ARTICLE XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV.

Under the reserves and conditions to be determined by common agreement,* the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

ARTICLE XVI.

An international office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This Office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its direction. The functions of this Office are determined by common accord between the countries of the Union.

ARTICLE XVII.

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

* See paragraph 4 of Final Protocol, p. 103.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general declaration comprehending all their Colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorized to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

ARTICLE XXI.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the 9th day of September 1886.

Additional Article.

The Plenipotentiaries assembled to sign the Convention concerning the creation of an International Union for the protection of literary and artistic works have agreed upon the following Additional Article, which shall be ratified together with the Convention to which it relates :—

The Convention concluded this day in no wise affects the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to the said Convention.

In witness whereof, the respective Plenipotentiaries have signed the present Additional Article.

Done at Berne, the 9th day of September 1886.

Final Protocol.

In proceeding to the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows :—

1. As regards Article IV. it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

2. As regards Article IX. it is agreed that those countries of the Union whose legislation implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective Tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement alluded to in Article XIV. of the Convention is established as follows:—

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

5. The organization of the International Office established in virtue of Article XVI. of the Convention shall be fixed by a Regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the International Office will be French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different Administrations, will edit a periodical publication in the French language treating questions which concern the Union. The Governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is about to be held, will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussions without a deliberative voice. He will make an annual Report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 fr. a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The share of the total expense to be paid by each country shall be determined by the division of the Contracting and acceding States into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

First Class	-	25 units.
Second „	-	20 „
Third „	-	15 „
Fourth „	-	10 „
Fifth „	-	5 „
Sixth „	-	3 „

These co-efficients will be multiplied by the number of States of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

7. It is agreed that, as regards the exchange of ratifications contemplated in Article XXI., each Contracting Party shall give a single instrument, which shall be deposited, with those of the other States, in the Government archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries present.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

In witness whereof the respective Plenipotentiaries have signed the same.

Done at Berne, the 9th day of September 1886.

Procès-verbal of Signature.

The undersigned Plenipotentiaries, assembled this day to proceed with the signature of the Convention with reference to the creation of an International Union for the protection of literary and artistic works, have exchanged the following declarations:—

1. With reference to the accession of the Colonies or foreign possessions provided for by Article XIX. of the Convention:

The Plenipotentiaries of His Catholic Majesty the King of Spain reserve to the Government the power of making known His Majesty's decision at the time of the exchange of ratifications.

The Plenipotentiary of the French Republic states that the accession of his country carries with it that of all the French Colonies.

The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty.

At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following Colonies or possessions, in the manner provided for by Article XX. of the Convention, namely:—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

2. With respect to the classification of the countries of the Union having regard to their contributory part to the expenses of the International Bureau (No. 5 of the Final Protocol):

The Plenipotentiaries declare that their respective countries should be ranked in the following classes, namely:—

Germany in the first class.
Belgium in the third class.
Spain in the second class.
France in the first class.
Great Britain in the first class.
Haïti in the fifth class.
Italy in the first class.
Switzerland in the third class.
Tunis in the sixth class.

The Plenipotentiary of the Republic of Liberia states that the powers which he has received from his Government authorize him to sign the Convention, but that he has not received instructions as to the class in which his country proposes to place itself with respect to the contribution to the expenses of the International Bureau. He, therefore, reserves that question to be determined by his Government, who will make known their intention on the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present *procès-verbal.*

Done at Berne, the 9th day of September 1886.

Procès verbal recording Deposit of Ratifications.

In accordance with the stipulations of Article XXI, paragraph 1, of the Convention for the creation of an International Union for the protection of literary and artistic works, concluded at Berne on the 9th September 1886, and in consequence of the invitation addressed to that effect by the Swiss Federal Council to the Governments of the High Contracting Parties, the Undersigned assembled this day in the Federal Palace at Berne for the purpose of examining and depositing the ratifications of:—

Her Majesty the Queen of Great Britain and Ireland, Empress of India,
His Majesty the Emperor of Germany, King of Prussia,
His Majesty the King of the Belgians,
Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain,
The President of the French Republic,
The President of the Republic of Haïti,
His Majesty the King of Italy,
The Council of the Swiss Confederation,
His Highness the Bey of Tunis,

to the said International Convention, followed by an Additional Article and Final Protocol.

The instruments of these acts of ratification having been produced and found in good and due form, they have been delivered into the hands of the President of the Swiss Confederation, to be deposited in the archives of the Government of that country, in accordance with clause No. 7 of the Final Protocol of the International Convention.

In witness whereof the undersigned have drawn up the present *procès-verbal*, to which they have affixed their signatures and the seals of their arms.

Done at Berne, the 5th September 1887, in nine copies, one of which shall be deposited in the archives of the Swiss Confederation with the instruments of ratification.

For Great Britain -	(L.S.)	F. O. ADAMS.
For Germany - -	(L.S.)	ALFRED VON BÜLOW.
For Belgium - -	(L.S.)	HENRY LOUMYER.
For Spain - -	(L.S.)	COMTE DE LA ALMINA.
For France - -	(L.S.)	EMMANUEL ARAGO.
For Haïti - -	(L.S.)	LOUIS-JOSEPH JANVIER.
For Italy - -	(L.S.)	FÉ.
For Switzerland -	(L.S.)	DROZ.
For Tunis - -	(L.S.)	H. MARCHAND.

Protocol.

On proceeding to the signature of the *procès-verbal* recording the deposit of the acts of ratification given by the High Parties Signatory to the Convention of the 9th September 1886, for the creation of an International Union for the

protection of literary and artistic works, the Minister of Spain renewed, in the name of his Government, the declaration recorded in the *procès-verbal* of the Conference of the 9th September 1886, according to which the accession of Spain to the Convention includes that of all the territories dependent upon the Spanish Crown.

The Undersigned have taken note of this declaration.

In witness whereof they have signed the present Protocol, done at Berne, in nine copies, the 5th September 1887.

C.

The American Copyright Bill.

[N.B.—*This Bill has passed the House of Representatives, but has not yet passed the Senate of the United States; whether it will become law is still doubtful.*]

An Act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to Copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and fifty-two of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

'Sec. 4952. The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of dramatic composition, of publicly performing or representing it or causing it to be performed or represented by others; and authors or their assigns shall have exclusive right to dramatise and translate any of their works for which copyright shall have been obtained under the laws of the United States.'

Sec. 2. That section forty-nine hundred and fifty-four of the Revised Statutes be, and the same is hereby amended, so as to read as follows:

'Sec. 4954. The author, inventor, or designer, if he be still living, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term; and such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers printed in the United States for the space of four weeks.'

Sec. 3. That section forty-nine hundred and fifty-six of the Revised Statutes of the United States be, and the same is hereby, amended so that it shall read as follows:

'Sec. 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within

the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright, nor unless he shall also, not later than the day of the publication thereof in this or any foreign country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of same: *Provided*, That in the case of a book the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom. During the existence of such copyright the importation into the United States of any book so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set within the limits of the United States, shall be, and it is hereby, prohibited, except in the cases specified in section twenty-five hundred and five of the Revised Statutes of the United States,* and except in the case of persons purchasing for use and not for sale, who import not more than two copies of such book at any one time, in each of which cases the written consent of the proprietor of the copyright, signed in the presence of two witnesses, shall be furnished with each importation: *And provided*, That any publisher of a newspaper or magazine may, without such consent, import for his own use but not for sale not more than two copies of any newspaper or magazine published in a foreign country: *Provided, nevertheless*, That in the case of books in foreign languages, of which only translations in English are copyrighted the prohibition of importation shall apply only to the translations of the same, and the importation of the books in the original language shall be permitted.'

SEC. 4. That section forty-nine hundred and fifty-eight of the Revised Statutes be, and the same is hereby, amended so that it will read as follows:

'SEC. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered the following fees:

'First. For recording the title or description of any copyright book or other article, fifty cents.

'Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

'Third. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

'Fourth. For every copy of an assignment, one dollar.

'All fees so received shall be paid into the Treasury of the United States: *Provided*, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.

'And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed

* By s. 2505 the importation of (amongst others) books "which shall have been printed and manufactured more than 20 years from [*i.e.* prior to] the date of importation" is exempt from duty.

by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this Act and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to the collectors of customs of the United States and to the postmasters of all post-offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster-General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles copyrighted under this Act during the term of the copyright.'

SEC. 5. That section forty-nine hundred and fifty-nine of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

'SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial changes shall be made: *Provided, however*, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this Act, shall be held and deemed capable of being copyrighted as above provided for in this Act, unless they form a part of the series in course of publication at the time this Act shall take effect.'

SEC. 6. That section forty-nine hundred and sixty-three of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

'SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty and one-half to the use of the United States.'

SEC. 7. That section forty-nine hundred and sixty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

'SEC. 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book, as provided by this Act, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatise, translate, or import, or knowing the same to be so printed, published, dramatised, translated, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.'

SEC. 8. That section forty-nine hundred and sixty-five of the Revised Statutes be, and the same is hereby, so amended as to read as follows:

SEC. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this Act, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatise, translate, or import, either in whole or in

part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, dramatised, translated, or imported, shall sell or expose to sale any copy of such map or other article as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale, and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States.'

SEC. 9. That section forty-nine hundred and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

'SEC. 4967. Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury.'

SEC. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby, repealed.

SEC. 11. That for the purpose of this Act each volume of a book in two or more volumes, when such volumes are published separately and the first one shall not have been issued before this Act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.

SEC. 12. That this Act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one.

SEC. 13. That this Act shall only apply to a citizen of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation permits to citizens of the United States of America copyright privileges substantially similar to those provided for in this Act; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the grant of copyright, by the terms of which agreement the United States of America may at its pleasure become a party to such agreement. The existence of either of these conditions shall be determined by the opinion of the Attorney-General of the United States, whenever an occasion for such a determination arises.

Passed the House of Representatives, December 3, 1890.

Attest: EDWD. McPHERSON,
Clerk.

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BY

J. M. LELY, Esq., Barrister-at-Law.